TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1926

No. [redacted] 42

THE HEIRS OF SAMUEL GARLAND, DECEASED, APPELLANTS,

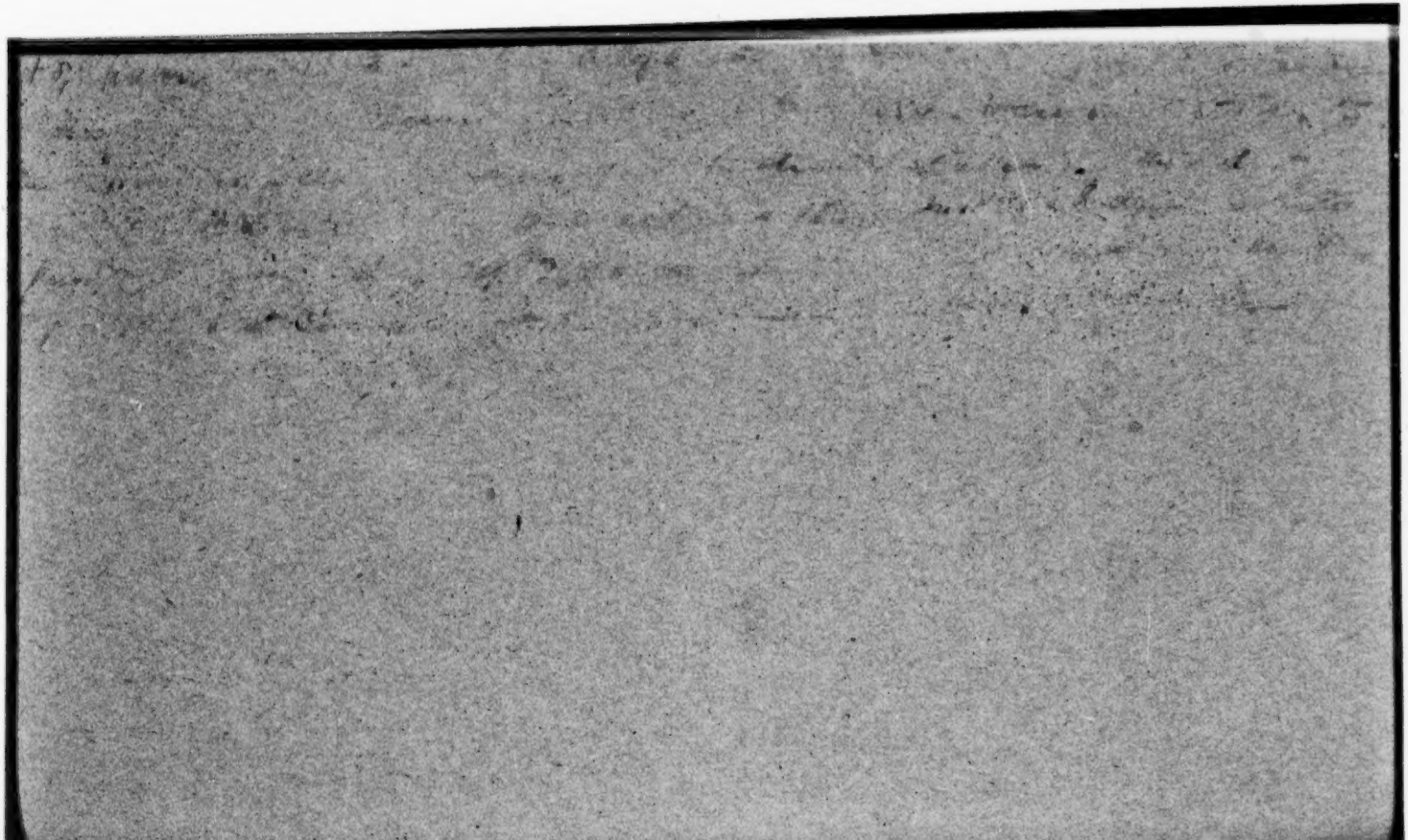
vs.

THE CHOCTAW NATION

APPEAL FROM THE COURT OF CLAIMS

FILED FEBRUARY 19, 1925

(30,879)



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INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 30, 1925

[fol. 1] **COURT OF CLAIMS OF THE UNITED STATES**

THE HEIRS OF SAMUEL GARLAND, Deceased,

vs.

THE CHOCTAW NATION

I. HISTORY OF PROCEEDINGS

On June 17, 1919, the record on appeal in this case was delivered to the attorney of record, and said case was docketed in the Supreme Court as No. 27,171.

On June 13, 1921, the mandate of the Supreme Court was filed in this office with the following order:

"It is now here ordered and adjudged by this Court that the judgment of the said Court of Claims in this cause be, and the same is hereby, reversed.

And it is further ordered that this cause be, and the same is hereby, remanded to the said Court of Claims for further proceedings in conformity with the opinion of this Court.

June 1, 1921."

II. ARGUMENT AND SUBMISSION OF CASE—Mar. 4, 5, 1924

On March 4 and 5, 1924, this case was argued and submitted by Mr. Harry Peyton, for the plaintiffs, by Mr. E. O. Clark, for the Choctaw Nation, and Mr. George T. Stormont, for the defendant.

[fol. 2] III. FINDINGS OF FACT, CONCLUSION OF LAW, AND OPINION OF THE COURT BY BOOTH, J.—Entered June 9, 1924

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT

I

This suit was filed on September 3, 1908, under Section 5 of the act of May 29, 1908, 35 Stat., 445, which provides:

"That the Court of Claims is hereby authorized and directed to to hear and adjudicate the claims against the Choctaw Nation of Samuel Garland, deceased, and to render judgment thereon in such amounts, if any, as may appear to be equitably due. Said judgment, if any, in favor of the heirs of Garland shall be paid out of any funds

in the Treasury of the United States belonging to the Choctaw Nation, said judgment to be rendered on the principle of quantum meruit for services rendered and expenses incurred. Notice of said suit shall be served on the governor of the Choctaw Nation, and the Attorney General of the United States shall appear and defend in said suit on behalf of said nation."

II

By resolution of the Legislative Assembly of the Choctaw Nation approved November 9, 1853, P. P. Pitchlynn, Israel Folsom, Dixon W. Lewis, and Samuel Garland were appointed delegates of the Choctaw Nation to institute in behalf of said Nation a claim against the United States for compensation for the country east of the Mississippi ceded by said Nation to the United States by the treaty of 1830, and the said delegation was granted full power to settle and dispose of by treaty or otherwise "all and every claim and interest of the Choctaw people against the United States," and "in case of resignation or death of any of said delegation above mentioned, the [fol. 3] Chiefs have the power to appoint any person to fill such vacancy in his district." The said resolution is attached to these findings as appendix "A" and is made part hereof by reference. In pursuance of the resolution of November 9, 1853, Peter P. Pitchlynn, the business manager of the delegation, visited Washington alone, and in January, 1854, employed one Albert Pike, an attorney engaged in the practice of law at Little Rock, Arkansas, to prosecute the claim of the Choctaw Nation for compensation for their lands east of the Mississippi River ceded to the United States by the treaty of September 27, 1830 (7 Stat. 333), generally known as the "net proceeds claim," and March 13, 1854, a contract in writing was entered into between the said Pitchlynn and Pike, by the terms of which the said Pike was to receive 25 per centum of the amount recovered from the Government, one-fifth of which, by a private agreement, was to go to said Pitchlynn. After the execution of this contract Pike employed one John T. Cochrane, who has been Chief Clerk of the Indian Office and was then following the business of Indian Claim Agent, to assist him in the prosecution of the claim, and who was also to receive one-fifth of the compensation. Two-fifths were to go to other parties not disclosed. This contract was not submitted in evidence. After the employment of Cochrane, Pike returned in April, 1854, to his law practice in Arkansas, and later removed his law business to New Orleans. In the meantime, the said Cochrane prosecuted the said claim before Congress and its committees, submitting various papers containing facts and arguments in support of said claim. On November 10, 1854, the Choctaw Council passed a resolution authorizing the said delegation "to enter into any and all contracts which in their judgment are or may become necessary and proper, in the name of the Choctaw people, to bring to a final and satisfactory adjustment and settlement all claims or demands whatsoever, which the Choctaw tribe, or any member thereof, has against the Government of the United

States by treaty or otherwise." On February 13, 1855, the said John T. Cochrane entered into a written contract with the full delegation, which, after reciting the fact that a contract had been entered into with the said Albert Pike on March 13, 1854, and had been abandoned by him, annulled the said contract with Pike and employed the said Cochrane to prosecute all its claims against the Government, for which he should receive 30 per centum of such amount as might be recovered thereon. (This contract is attached to these findings as Appendix "B," and is made part hereof by reference.) The Cochrane contract was never ratified by the Choctaw Council.

By and through the efforts of the said John T. Cochrane on June 22, 1855 (11 Stat. 611-619), a treaty was entered into between the United States and the Choctaw and Chickasaw Nations signed by George W. Manypenny for the United States and P. P. Pitchlynn, Israel Folsom, Samuel Garland, and Dixon W. Lewis, Choctaw Commissioners, and Edmund Pickins and Sampson Folsom, Chickasaw Commissioners, and ratified by the Choctaw and Chickasaw Nations and the United States. By article 11 the claim for the lands ceded by the treaty of September 27, 1830, was submitted to the United States Senate for final settlement, and by article 12 it was agreed that any award of the net proceeds of such lands made [fol. 4] by the Senate should be received by the Choctaw Nation in full satisfaction of all claims of the Choctaw Nation, whether national or individual, arising under any former treaty, and "so much of the fund, awarded by the Senate to the Choctaws, as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just liabilities of the tribe shall on their requisition be paid over to them by the United States."

Thereafter the said Albert Pike returned to Washington and he and John T. Cochrane resumed their partnership under the Cochrane contract and agreed between themselves to a division of the compensation of 30 per centum, 5 per centum to said Pike, 5 per centum to said Cochrane, and 5 per centum to one Luke Lea, who had been Commissioner of Indian Affairs, and the remaining 15 per centum to be paid to Peter P. Pitchlynn on his receipt, to be by him distributed "as justice and equity may demand," as he, the said Albert Pike, wished to have nothing to do with its distribution. The said Albert Pike subsequently employed one John B. Luce to assist him in prosecuting the claim before the Senate under the treaty of 1855, and through their joint efforts before Congress and its committees the Senate passed a resolution on March 9, 1859, fixing the value per acre of the said land sold up to January 1, 1859, and adopted a rule for ascertaining the amount due to the Choctaw Nation; and on the same day the Senate passed another resolution directing the Secretary of the Interior to render an account, stating the amount due in accordance with the principles of settlement laid down in the first resolution, and to report the same to Congress. The Secretary of the Interior on May 8, 1860, reported that there was a balance due the Choctaw Nation of $2,981,217.30.

III

There was found among the records in the office of the national secretary of the Choctaw Nation on August 31, 1892, the following contract:

We, the undersigned chiefs, do hereby agree that the delegation, viz, Samuel Garland, P. P. Pitchlynn, Israel Folsom, and Dixon W. Lewis, shall receive twenty per cent upon all claims arising or accruing to this Nation or to individuals under the treaty of June 22, 1855, for their services in negotiating said treaty and for other services which are to be rendered hereafter at Washington. But it is directly understood and agreed upon that said delegation are to receive no fees for the lease money, nor from the funds which the Chickasaws are to pay for jurisdiction granted them in the treaty.

In testimony whereof, we hereunto set our hands and seals.

N. Cochnauer (Seal), Geo. W. Harkins (Seal), Allen Wright (Seal), P. C. C. N.

Given this, the 2d day of November, 1855. Approved as required by the third section of the schedule of the constitution this the 18th day of October, 1868.

[fol. 5] Section 3 of the schedule to the constitution of the Choctaw Nation of 1860 (Laws of the Choctaw Nation, compilation of 1869, p. 23) reads:

"Any special appointments or contracts heretofore made and approved under existing laws or resolutions of the General Council shall be approved by the principal chief of this nation and the appointees commissioned and contracts so made ratified by him."

IV

Dixon W. Lewis died prior to November 4, 1857, and thereafter at some time prior to October 27, 1858, Peter Folsom was appointed a delegate to succeed said Lewis, the delegation of 1853 thereafter consisting of Peter P. Pitchlynn, Israel Folsom, Samuel Garland, and Peter Folsom.

On March 2, 1861, 12 Stat. 238, 239, Congress appropriated $500,000 on account of the Choctaw claim under articles 11 and 12 of the treaty of June 22, 1855, supra, of which $250,000 was to be paid in money and $250,000 in Government bonds upon the requisition of the proper authorities of the Choctaw Nation. This $250,000 that was to be paid in cash was collected by Peter P. Pitchlynn, "the business manager" of the delegation, who turned over $135,000 to the United States Indian Agent D. H. Cooper to buy corn for the Choctaw Nation. He paid $40,000 of it to Albert Pike for services in "net proceeds claim" and expended part in the purchase of corn which spoiled, and the balance was not accounted for satisfactorily. The said Pitchlynn retained $115,000, and the evidence does not show to the satisfaction of the court that any part of this amount reached the Treasury of the Choctaw Nation. At least $74,927.45

of said amount was appropriated by the delegation to its own use. The Civil War coming on, the $250,000 bond issue to the Choctaw Nation was never carried into effect. The bond issue was suspended from time to time by Congress, and finally, on making other provision for the settlement of the "net proceeds claims," was dropped.

V

On July 12, 1861, a treaty was entered into between the Confederate States of America and the Choctaw and Chickasaw Nations by article 1 of which it was provided that "There shall be perpetual peace between the Confederate States of America and all of their States and people and the Choctaw and Chickasaw Nations and all the people thereof." By article 54 of said treaty the Confederate States assumed, among other things, the payment of "all sums of money * * * justly due and owing by the later United States under existing treaties to the Choctaw Nation or people, for itself or in trust for individuals." (Confederate Statutes at Large, by Matthews, p. 311.)

The General Council by the act of November 1, 1861, made a settlement with the delegation and its attorneys up to that time, stating that there was still due the said delegation $84,394.23, of which $14,140 was due John T. Cochrane, attorney for said delegation, and $70,254.23 was due to the delegation. Under this settlement $30,275.84 was paid to the delegation and $9,583 was paid to Peter P. Pitchlynn, leaving a balance of $30,395.39, of which $7,000 was [fol. 6] later paid, date not given, leaving a balance of $23,395.39 due under said settlement.

By the act of July 5, 1862, 12 Stat. 512, 528, Congress provided "that all appropriations heretofore or hereafter made to carry into effect treaty stipulations, or otherwise, in behalf of any tribe or tribes of Indians, all or any portion of whom shall be in a state of actual hostility to the Government of the United States, including the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, Wichitas, and other affiliated tribes, may and shall be suspended and postponed wholly or in part at and during the discretion and pleasure of the President: Provided further, That the President is authorized to expend such part of the amount heretofore appropriated and not expended and hereinbefore appropriated for the benefit of the tribes named in the preceding proviso as he may deem necessary for the relief and support of such individual members of said tribes as have been driven from their homes and reduced to want on account of their friendship to the Government."

The President was further given authority to abrogate the treaties of tribes engaged in actual hostilities such as was the case with the Choctaw Nation during the Civil War, but he did not do so.

VI

By an act of the Choctaw Council of October 17, 1865, a commission consisting of five persons was created to negotiate a new treaty with the United States, the members to be nominated by the princi-

pal chief and ratified by the Council. The act provided, among other things, that "The commissioners appointed under this act shall be entitled to compensation at the rate of three dollars each per day and mileage during the time for which service is rendered, in addition to the paying of their expenses."

The commissioners appointed under the act were Alfred Wade, Allen Wright, James Riley, John Page, and Robert Jones. Robert Jones did not sign the treaty that was subsequently entered into and does not appear to have taken any part in the negotiations.

The act of the Council creating the commission did not authorize the employment of attorneys by it, nor did the act of October 19, 1865, giving instructions to the committee confer such authority.

The Chickasaw Nation also passed an act creating a commission to negotiate a treaty with the United States and appointed five commissioners thereunder, and both commissions signed the treaty.

The Choctaw and Chickasaw Commissions on arriving in Washington, considering it necessary to employ counsel to protect the interests of the Choctaw and Chickasaw people, entered into informal agreements with one John H. B. Latrobe, a Baltimore lawyer, the agreement of the Choctaw Commission was reduced to writing and designated as a memorandum and signed by all of said commissioners, except Robert Jones, but was not signed by the said Latrobe. The Chickasaw Commission entered into a separate contract with said Latrobe. The Choctaw memorandum agreement stipulated, among other things, as follows:

"That in case Mr. Latrobe should succeed in preventing the abrogation of our former treaties with the United States, save our annuities and other moneys which are not paid to us for the five years from 1861 to 1865, inclusive, and also secure us against the sale, [fol. 7] as required by the Government of the United States, of a large portion of our country east of the ninety-eighth degree of west longitude, the Choctaws on their part, and as their share of the expenses, would allow and pay to him the sum of not less than $100,000. It being the understanding at the same time that, if the said unpaid annuities and other moneys belonging to the Choctaws were recovered and paid them, Mr. Latrobe should be entitled to and paid the one-half part thereof, the $100,000 aforesaid." This agreement was never ratified by the Choctaw Council. The above agreement is attached to these findings as "Appendix C" and is made part hereof by reference.

Under the above agreement the said Latrobe employed the said John T. Cochrane and D. H. Cooper, who had been Choctaw agent prior to the Civil War under the United States and during the war under the Confederate Government, to assist in negotiating a treaty with the United States, and mainly through their efforts before Congress and its committees the treaty of April 28, 1866, 14 Stat. 769, was entered into and ratified by the United States and the Choctaw and Chickasaw Nations.

Article 10 of the treaty reads: "The United States reaffirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations, entered into

prior to the great rebellion, and in force at that time, not inconsistent herewith; and further agrees to renew the payment of all annuities and other moneys accruing under such treaty stipulations and acts of legislations from and after the close of the fiscal year ending on the thirtieth of June, in the year eighteen hundred and sixty-six."

Some time after the ratification of the treaty of April 28, 1866, supra, Allen Wright, one of the Commissioners, who was also treasurer of the Choctaw Nation, paid over to John T. Cochrane and D. H. Cooper, who had authority to receive it, the $100,000 stipulated to be paid to the said J. H. B. Latrobe by the agreement before mentioned, who gave a receipt for $100,000 to the said Wright. There were present when the payment was made Alfred Wade, John Page, Allen Wright, and James Riley, Choctaw Commissioners; Peter P. Pitchlynn was also present. The said Cochrane returned $50,000 to the said Wright, who gave $10,000 to the three other commissioners, kept $10,000 himself, and gave the remaining $10,000 to Peter P. Pitchlynn, according to arrangement between said commissioners and the said Latrobe. The $50,000 retained by the said Cochrane was divided between himself, Latrobe, and Cooper in equal parts. The Choctaw Council was never informed of the division of the $100,000 fee, but were left by the Treasurer, Wright, to believe it had all been paid to Latrobe. The Chickasaw Nation paid the same amount to Latrobe, Cochrane, and Cooper and its commissioners for the negotiation of said treaty, which cost the two nations $200,000. Pitchlynn, when the payment of $10,000 to him became known, was willing that it should be considered as a payment on account of the "net-proceeds claim." Pitchlynn was also paid $2,834 per diem and expense money of Robert Jones; subsequently he gave Jones $1,417 and retained $11,417.

VII

The said John T. Cochrane died on October 21, 1866. By section 2 of the resolution of the Choctaw Council of November 18, 1867, the [fol. 8] delegates, P. P. Pitchlynn, Israel Folsom, Samuel Garland, and Peter Folsom, were directed, in the event that an appropriation should be made by Congress, in whole or in part in the "net proceeds claim," to report to the national attorney of the Choctaw Nation the fact of such appropriation, "who shall proceed to investigate the claim of such delegates as well as the amount that may be due their attorneys for fees under a certain contract said to have been made with John T. Cochrane, dated February 13, 1855, and shall report the amount due to the delegates and attorneys to the principal chief of this nation, who shall convene the Council, should he deem it necessary, in order to provide payment due under the contract aforesaid, as well as to carry into effect the twelfth article of the treaty of June 22, 1855. It being understood, however, that no money shall be paid on said contract, or any other contract which has not been duly authorized and approved by the Council; and when contracts are adjusted and paid they shall be duly cancelled and filed away in the office of the national secretary."

VIII

After the death of John T. Cochrane nothing of any consequence was done in furtherance of the "net proceeds claim" until the contract was made with James G. Blunt and Henry E. McKee. It is true a memorial signed by P. P. Pitchlynn, and prepared by J. H. B. Latrobe, was presented to the Judiciary Committee of the Senate in February, 1870, urging Congress to appropriate the balance of the Senate award, but nothing was accomplished.

Thereafter the following contract was entered into and signed on behalf of the Choctaw Nation by P. P. Pitchlynn and Peter Folsom, and on behalf of themselves by James G. Blunt and Henry E. McKee:

"Whereas the council of the Choctaw nation or tribe of Indians did, by resolution approved November 9th, 1853, appoint P. P. Pitchlynn, Israel Folsom, Dixon H. Lewis, and Samuel Garland, of the Choctaw Nation, as delegates to proceed to Washington, with full powers and authority to prosecute the claims of the Choctaw people against the United States arising from the sale of lands east of the Mississippi River, ceded by the Choctaw Nation to the United States, and for other purposes, which power and authority of said delegates was reaffirmed by the Choctaw council by resolution approved November 10th, 1854, with power to enter into contracts and in the name of the Choctaw people to do whatever in their judgment was necessary to a final adjustment and settlement of the aforesaid claims of the Choctaw people against the United States; and

"Whereas on behalf of the Choctaw people we have employed James G. Blunt, of the city and county of Leavenworth, State of Kansas, and Henry E. McKee, of Fort Smith, Arkansas, as counsel to prosecute said claim, and recover the same to the Choctaw Nation or people. It is therefore stipulated and agreed that for services rendered and money expended and to be expended by them in the prosecution of said claims, the said James G. Blunt and Henry E. McKee shall receive thirty (30) per centum of the one million eight hundred and thirty-four thousand and eighty-four ($1,834,084) dollars, awarded and due to the Choctaw people by the United States, [fol. 9] or of any sum that may be paid by the United States on account of said claim which (30) per centum of said claim shall be paid to said Blunt and McKee, or their legal representatives, whenever the money or bonds arising from said claim shall come into the possession of the party or parties authorized by the Choctaw people to receive the same.

"The said Blunt and McKee to pay to Mrs. John T. Cochrane, of Washington City, D. C., (5) five per centum from the (30) thirty per centum before referred to whenever they shall receive the same; and the said Blunt and McKee further agree to adjust the claims of all parties who have rendered service heretofore in the prosecution of said claim upon the principle of equity and justice according to the value of the services so rendered.

"In witness whereof we have hereunto set our hands and affixed

our seals this 16th day of July, A. D. 1870, at the city of Washington, D. C."

The following authorization, dated August 24, 1871, and addressed "to whom it may concern," was signed by James G. Blunt: "The undersigned, having been employed (in connection with Henry E. McKee, of Fort Smith, Ark.) by the authorized delegation of the Choctaw Nation, to prosecute and collect from the United States the claim known as the Choctaw "net-proceeds claims," I hereby authorize the said Henry E. McKee to employ such additional counsel to assist in the case as he may deem proper, hereby giving full assent to whatever he (the said McKee) may do in the premises."

Counsel employed by McKee under his contract were John J. Weed, who was employed to write documents and papers of that kind; John B. Luce, employed in 1872, because he had an intimate personal knowledge of the case that nobody else had, and who remained in Washington with McKee until the claim was concluded. F. P. Cuppy, a member of the Washington bar, was employed in 1873. Senator Matt. Carpenter was employed after he went out of the Senate, in 1875; he rendered little service and died before the claim was referred to the Court of Claims. Messrs. Shellabarger and Wilson were employed a few days before the Jurisdictional act of March 3, 1881, was passed. They took the place of Mr. Carpenter and were to have a fee of 2 per cent on the amount recovered, not to exceed $50,000.

Memorial briefs and arguments to Congress and its committees were presented or made in 1871, 1872, 1873, 1874, 1876, 1877, 1879, 1881, beginning February 6, 1871, and ending February 8, 1881, by the said McKee, or attorneys employed by him, making a total of 682 pages, most of which were printed as public documents.

On October 30, 1873, the Choctaw Council passed an act providing, "That as soon as any amount may be appropriated by Congress for the net proceeds, the national treasurer be authorized and directed to receive the same at Washington and to pay not exceeding thirty (30) per cent in fulfillment of the Choctaw contracts and twenty (20) per cent of such appropriation for the delegates of 1853 and 1854, to enable them to discharge all liabilities and obligations under said contracts and all expenses necessarily incurred in recovering said claim, the other half to be returned for claim of individuals or for national purposes as indicated in 11th and 12th articles of the [fol. 10] treaty of 1855, provided that all just debts due the nation whether from the said delegation or for any sum improperly advanced under the Cochrane contract, shall first be deducted and the residue coming under said contract or to said delegation, respectively, after final settlement at Washington shall be paid to them or their representative by said treasurer, the object of the act being to secure a fair settlement and full payment of 30 per cent, deducting whatever has already been paid."

Samuel Garland died in 1870, prior to March 20; Israel Folsom died in 1870, prior to July 16, and Peter P. Pitchlynn died January

17, 1881. Thereafter Peter Folsom became the sole surviving delegate and business manager of the delegates of 1853.

IX

Following the efforts of the said Henry E. McKee and the attorneys employed by him, as described above, the act of March 3, 1881 (21 Stat. 504), was passed by Congress, providing, among other things, "That the Court of Claims is hereby authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the Choctaw Nation, and to render judgment thereon; power is hereby granted the said court to review the entire question de novo, and it shall not be estopped by any action had or award made by the Senate of the United States in pursuance of the treaty of eighteen hundred and fifty-five."

At the request of the said Henry E. McKee, Peter Folsom on April 26, 1881, entered into a written contract with the said John B. Luce by which the said John B. Luce agreed to prosecute the "net proceeds claim" before the Court of Claims and the Supreme Court, and the said Peter Folsom agreed that the said John B. Luce should receive for such services 5 per cent of any amounts that might be recovered, which should be considered as payment in full for all services rendered, as well as before the Senate in securing its award as before said courts, and it was agreed between said McKee and Luce outside of said contract between Folsom and Luce that the said 5 per cent should be paid out of the 30 per cent compensation stated in McKee's contract of July 16, 1870.

The contract between Folsom and Luce is appended to these findings as Appendix "D" and made part hereof by reference.

On February 26, 1884, the Choctaw Nation filed a substitute petition in the Court of Claims, which was demurred to by the United States, and on March 3, 1884, the demurrer was overruled and an opinion handed down. The case was argued on behalf of the Choctaw Nation by Mr. Samuel Shellabarger and Mr. F. P. Cuppy (19 Ct. Cls. 243).

The case of the Choctaw Nation vs. United States was afterwards heard by the Court of Claims on merits, and "Messrs. John B. Luce, John J. Weed, Samuel Shellabarger, and F. P. Cuppy, on behalf of the claimants, addressed the Court at great length, the arguments extending over twenty days, and the briefs filed containing many hundred pages." The court held that the Senate award was not conclusive upon it, and that under the jurisdictional act it [fol. 11] was authorized to go behind the award. The court held that under its findings of fact the Choctaw Nation was entitled to recover $658,120.32, less $250,000 paid on the Senate's award under the act of 1861, and rendered judgment for the balance, $408,120.32. Choctaw Nation v. United States, 21 C. Cls. 59.

The case afterwards went up to the Supreme Court on appeal, and was argued on behalf of the Choctaw Nation by Messrs. John J. Weed, Jeremiah M. Wilson, and Samuel Shellabarger. The Supreme

Court held that the Choctaw Nation was entitled to recover the award of the Senate, $2,981,247.30, subject to the deduction of $250,000 paid under the act of 1861, to unpaid annuities amounting to $59,449.32, and for Choctaw land taken by the United States in fixing the boundary line between the State of Arkansas and the Choctaw Nation, $68,102.00. The total amount of the judgment the Court of Claims was directed to render was $2,858,798.62, with interest from December 16, 1886, to June 29, 1888, amounting to $3,078,370.23, which was appropriated by Congress by the act of June 29, 1888. 25 Stat. 239.

X

On February 25, 1888, the following act was passed by the Choctaw Council:

"Whereas the delegates of the Choctaw Nation of 1853, composed of P. P. Pitchlynn and others, have recovered from the United States Government in favor of the Chactaw Nation for $2,858,798.62; And whereas under the contract of the Choctaw Nation with said delegates, dated Nov. 2nd, 1855, it is entitled to be paid twenty (20) per cent of said judgment: Now therefore

"Be it enacted by the General Council of the Choctaw Nation assembled:

"Sec. 1. That the sum of twenty (20) per cent of the amount appropriated by Congress as payment of said judgment is hereby appropriated out of said fund and directed to be paid to Campbell Leflore and Edmund McCurtain, delegates and successors to P. P. Pitchlynn and other delegates of 1853 to enable them to pay the expenses and discharge the obligation in the prosecution of said claim and to settle with the respective distributees of said delegation.

"Sec. 2. Be it further enacted that the sum of $23,395.39, being the balance due the delegation under the settlement of Nov., 1861, is hereby appropriated out of said fund, less 10% on $1,500.00.

"Sec. 3. Be it further enacted that the said sums shall be paid to Campbell Leflore and Edmund McCurtain, delegates of the Choctaw Nation, successors to P. P. Pitchlynn and others, and where so paid shall be accepted as a complete payment and a final discharge of all debts and obligations of the Choctaw Nation to said delegation under said contract.

"Sec. 4. Be it further enacted that the sum of twenty (20) per cent herein provided to be paid to the delegation aforesaid, and the sum of thirty (30) per cent heretofore provided to be paid to the attorneys shall be accepted as full and final settlement of the amount due under their respective contracts and that the remaining half or fifty (50) per cent of the amount appropriated for the payment of said judgment shall be retained in the Treasury of the United States subject to the legislation and requisition of the General Council of [fol. 12] the Choctaw national purposes and for the payment of the

claims of individual Choctaws under the twelfth (12) article of the treaty of 1855.

"Sec. 5. Be it further enacted that this act shall take effect and be in force from and after its passage."

On the same day another act was passed, as follows:

"That the principal chief be and is hereby authorized and directed for and on behalf of the Choctaw Nation to make requisition upon the proper authorities of the United States in such form as may be required by such authorities for the payment to Campbell Leflore and Edmund McCurtain, delegates, successors to P. P. Pitchlynn and others, or to their order, the sum of twenty (20) per cent of whatever may be appropriated by Congress in payment of the judgment of the Court of Claims in favor of the Choctaw Nation rendered, on the 15th day of December, 1886, and in addition thereto the sum of $23,395.39, the same to be paid in such sums and such times and places as shall be requested by the said Leflore and Edmund McCurtain, less 10% on $1,500, and such requisitions when made shall be taken and accepted as and is hereby declared to be such, requisition as is required by the twelfth (12) article of the treaty of 1855.

"Sec. 2. Be it enacted that this act shall take effect and be in force from and after its passage."

Pursuant to Section 9 of the act of June 29, 1888, 25 Stat., 239, and the act of the Choctaw Council of February 25, 1888, the Principal Chief of the Choctaw Nation, on July 9, 1888, made requisition on the Secretary of the Treasury for 20 per cent of the said judgment and interest thereon, plus $23,395.39 remaining due said delegates from the settlement of 1861, less 10 per cent of $1,500, advanced to the estate of Israel Folsom, to be paid to the order of the said Campbell Leflore and Edmund McCurtain. On July 28, 1888, 55 drafts of $10,000 each, 17 drafts of $5,000 each, and one draft of $3,944.46 on the Assistant Treasurer at New York, amounting to $638,944.46, were forwarded to the said Leflore and McCurtain at Fort Smith, Arkansas.

XI

On February 25, 1888, the Choctaw Council passed an act which, after reciting the contract of July 16, 1870, with Henry E. McKee, and of April 26, 1881, with John B. Luce, and a contract between said McKee and Luce that the 5 per cent promised to Luce should be paid out of the 30 per cent promised to McKee, and stating that "the said McKee, by means of his own labors and the aid and assistance rendered by his associates in the prosecution of said claims, has recovered a judgment of $2,858,798.62," acknowledged and recognized said contracts as "valid and subsisting contracts with the Choctaw Nation duly authorized by law, and the service required by said McKee and the said Luce under said contracts as having been fully performed," stated that they were entitled to be paid the compensation agreed upon out of said judgment, and then pro-

ceeded to appropriate out of any amount that might be appropriated by Congress to pay said judgment, 5 per cent thereof to the legal representatives of the said John B. Luce, less $13,000 paid to said Luce in his lifetime, and 25 per cent of any appropriations by Con-[fol. 13] gress for said purpose was appropriated for Henry E. McKee, or his executors, administrators or assigns. The said act also appropriated out of any money received by the Choctaw Nation for the United States in payment of said judgment, $14,140.00, shown by the act of the Choctaw Council of November 1, 1861, to be due the late John T. Cochrane, the said amount to be paid to the said Henry E. McKee "as herein authorized and directed." The said act is attached to these findings as Appendix "E" and is made part hereof by reference.

By act of the Choctaw Council of the same date, Campbell Leflore, and Edmund McCurtain were authorized to make requisition upon the proper authorities of the United States in such form as may be required by said authorities for payment to Henry E. McKee the sum of $714,699.65, with interest, and said sum of $14,140.00 due the said John T. Cochrane, said amounts to be paid in such sums and at such times and places as shall be requested by said McKee.

On July 3, 1888, Campbell Leflore, "delegate of the Choctaw Nation," addressed a communication to the Secretary of the Treasury requesting him to pay to Henry E. McKee $714,699.65, with interest from December 16, 1886, to June 29, 1888, together with the further sum of $14,140.00, without interest. On July 7, 1888, there was paid to said Henry E. McKee $714,699.65, with interest from December 16, 1886, to June 29, 1888, $54,924.17, and a further principal sum of $14,140.00, making a total of $783,763.82.

On the written request of Campbell Leflore, dated July 3, 1888, the fee of John B. Luce of $129,939.93 ($142,939.93—$13,000) was paid by the Treasury Department on July 10, 1888, as follows: To Shellabarger and Wilson, $50,000; Titus R. Meigs, $24,000; William Belden Nobe, executor of Belden Nobe, deceased, $5,000; Samuel Stevens, $6,000; Jeremiah M. Wilson, $1,200; John J. Weed, $1,200; and Cornelia P. Luce, $12,539.93.

XII

On October 24, 1888, Campbell Leflore and Edmund McCurtain reported to the General Council of the Choctaw Nation that they had distributed $1,641,896.57 of the "net proceeds" judgment paid to them by the United States Treasury on requisitions made in accordance with acts of the Choctaw Council, as follows: To J. B. Luce and others, $129,939.93; to H. E. McKee, $783,763.82; to Choctaw Treasurer, $89,248.36; and to the Choctaw delegation, $638,-944.46. They further reported that there remained of said judgment in the Treasury of the United States subject to requisition of the Choctaw Council $1,436,207.15.

Attached to said report of Leflore and McCurtain was a statement of disbursements of 20 per cent of the judgment on the "net proceeds claim" to the delegation of 1853 to persons to whom the said dele-

gation had incurred liabilities during the prosecution of the claim. The statement shows there was paid to P. P. Pitchlynn, $107,311.29; to Israel Folsom, $45,894.29; to Samuel Garland, $49,894.29; to Peter Folsom, $46,953.39. There was paid to the delegates of 1866 the sum of $11,889.84. This was because the item of the judgment for $59,449.32 for unpaid annuities was erroneously added to the item of $2,731,247.30, judgment for balance of judgment on "net [fol. 14] proceeds claim" after deduction of $250,000, making the amount on which the 20 per cent was computed that much too great.

There was paid to the boundary delegates "as per contract with delegates of 1853," $7,758.36. There was erroneously added to the item of the judgment on the net proceeds claim $2,731,247.30, the amount of the item of the judgment for Choctaw land taken by the United States in fixing the boundary between Arkansas and the Choctaw Nation, $68,102, making the amount on which the 20 per cent was computed that much too great, and the amount to be paid the delegation of 1853, $38,944.46, too great by $13,620.40, of this amount by agreement between the delegates of 1853 and the boundary delegates, it was settled for $7,758.36.

There was paid Blunt and loyal Choctaws per agreement with delegates of 1853, $25,000. This money was loaned by the loyal Choctaws through their agent and attorney, James G. Blunt, out of a sum of $108,942, awarded them under article 49 of the treaty of April 28, 1866. It was loaned September 23, 1868, and its return was agreed to in writing by the delegation of 1853 on February 11, 1869, out of the compensation to be paid by the Government on the "net proceeds claim."

There was "paid from memorandum of P. P. Pitchlynn" to twenty persons the sum of $107,626.40. Peter P. Pitchlynn, in his will dated January 1, 1881 (he died January 17, 1881), in item 14th stated he did not "owe any Choctaw anything in the way of a personal debt and nothing at all except in connection with the Net Proceeds Claim, as I have shown in another statement separate from this, for the information of Polson and our counsel."

There was "paid on promises made at Tushkahomma" $85,020. Tushkahomma was the captital of the Choctaw Nation and the Choctaw National Council consisting of a House and Senate held its sessions there and it was there the Choctaw officials had their offices. This $85,020.00 was distributed among sixteen different persons. Hy McBride was paid $10,000 to induce Governor Smallwood to call the Choctaw Council in special session to secure an act authorizing the distribution of the "net proceeds" payment without an audit by the net proceeds commission. He obtained action by Governor Smallwood and paid him $5,500 for such services and retained $4,500 for his own services. Five of these distributees had been governor of the Choctaw Nation, a number of them had been members of the Council, and all were influential in Choctaw national affairs. The most of those who were "paid from memorandum of P. P. Pitchlynn" were influential Choctaw politicians; several were white attorneys of Pitchlynn, and all on the two lists were paid for services in the prosecution of the "net proceeds claim,"

most of them for efforts and influence in securing the passage of the acts of February 25, 1888, ratifying the delegates' contract for 20 per cent and the McKee contract for 30 per cent for legal services, and the payment of said 50 per cent of the net proceeds judgment through the said Campbell Leflore and Edmund McCurtain without audit by the proper officers of the Choctaw Nation.

There was a payment to H. E. McKee of $145,399.15 as the delegates' share of the general expenses of the prosecution of the claim. After 1865 the "net proceeds claim" was prosecuted exclusively at the expense of the delegation, and after his contract of July 16, 1870, [fol. 15] the expense of the prosecution appears to have been borne by the said H. E. McKee. Under the will of said Pitchlynn, Henry E. McKee, John B. Luce, and S. Temple were delegated to settle his affairs.

The report of the said Leflore and McCurtain and the attached statement of disbursements were printed in pamphlet form, and during the session of the Choctaw Council thereafter were generally distributed as a public document among members of the Council, and such of the tribe not members who happened to be present, and were carried to every County in the Nation, and everybody was satisfied with the equity and justice of the distribution. Several copies were filed in the office of the national secretary. While no formal action was taken by the Council on said report and statement, it does appear that informally there were general expressions of satisfaction with the report. That this money received by Leflore and McCurtain was distributed, as shown by the report, is not disputed.

The distribution of the 20 per cent in the report and statement was made prior to August 23, 1888. The said report and statement of disbursements is attached to these findings as Appendix "F" and is made part of this finding by reference.

XIII

The final distribution of the remainder of the "net proceeds" judgment, $1,436,000, was made by a Choctaw commission appointed for that purpose, and was approved by the Choctaw Council by the act of December 24, 1889. (Law of the Choctaw Nation, p. 55.)

XIV

The Constitution of the Choctaw Nation contained, prior to the disbursements by Leflore and McCurtain of the delegates, 20 per cent, and until the State of Oklahoma was admitted into the Union in 1907, the following provisions:

"Sec. 1. The judicial power of this nation shall be vested in one supreme court, in circuit and county courts.

* * * * * * *

"Sec. 5. The circuit courts shall be composed of one circuit judge in each district, and shall have original jurisdiction in all criminal cases which shall not be otherwise provided for by law, and exclusive

original jurisdiction of all crimes amounting to felony, and original jurisdiction of all civil cases which shall not be cognizable before the judges of the county, until otherwise directed by law, and original jurisdiction in all matters of contracts and in all matters of controversy where the same is over fifty dollars. It shall hold its term at such times and places in each district as are now specified by law or may hereafter be provided.

"Sec. 6. The circuit courts shall exercise a superintending control over the county courts, and shall have power to issue all necessary writs and process to carry into effect their general and specific powers under such regulations and restrictions as may be provided by law.

"An act to organize and establish the circuit courts of the Choctaw Nation, and to define their power and jurisdiction, approved October 24, 1860, contains the following provisions:

* * * * * * *

[fol. 16] "Sec. 4. Be it further enacted, That the circuit courts of law in the several counties of the nation shall have original jurisdiction of all suits and actions for the recovery of money founded on any bonds or other written contracts when the principal of the sum in controversy exceeds fifty dollars, and all causes, matters, and things arising under the constitution and laws of this nation, which are not expressly cognizable in some other court established by law; and said circuit court shall have power to hear and determine all prosecutions in the name of the nation, by indictment for treason, murder, and all other felonies, crimes, and misdemeanors committed within their respective jurisdictions, except such as may properly belong to county court or in some other court of the nation or of the United States; as also to hear and determine all prosecutions by information as are designated in the constitution; and, moreover, shall have and exercise all the powers incident or belonging to a court of over and terminer and general jail delivery, and to do and perform all other acts properly pertaining to a circuit court of law; and the judges of said courts and each of them shall have power either in vacation or term time, to grant writs of habeas corpus, and all other remedial writs returnable according to law into any or either of said circuit courts.

"Sec. 5. Be it further enacted, That the said circuit courts shall have and possess original jurisdiction over all matters of divorce and for the foreclosure of mortgages; and the judges of said courts shall have power, either in vacation or term, to grant writs of injunction, to stay waste, to enjoin execution of a judgment, or to stay proceedings at law; to grant writs of ne exeat, and all other remedial writs returnable to a court of law."

XV

After the distribution of the delegates' 20 per cent by Leflore and McCurtain in August, 1888, no steps were taken by the heirs at law of Samuel Garland to obtain any further compensation in the courts

of the Choctaw Nation by suit against the said Leflore and McCurtain or against said Choctaw Nation, or to require the said Leflore and McCurtain to give bond for faithful performance of their duties under the act of the Choctaw Council of February 25, 1888. Nothing was done by said heirs until a bill was introduced in the Choctaw Council on November 6, 1897, to pay the heirs at law of the said Samuel Garland $115,786.65 out of any funds in the National Treasury not otherwise appropriated, as the balance due said heirs by reason of the contract of November 2, 1855, between the Choctaw Nation and the delegation of 1853. On the same day, November 6, 1897, the bill was passed by the Choctaw Council and referred to the principal Chief, or as he was generally known, the Governor of the Choctaw Nation, by whom it was vetoed.

XVI

The full Choctaw delegation of 1853 signed a number of communications addressed to the Commissioner of Indian Affairs and Douglas H. Cooper, United States Agent for the Choctaws in relation to the "net proceeds claim," the leased district claim, matters of dispute between the Choctaw and Chickasaw Nations, objection [fol. 17] of the Choctaw Nation to the Wichita and other tribes being located on their land, and other matters of tribal interest. One communication dated February 3, 1855, relating to the net proceeds claim, signed by the full delegation, was addressed to President Pierce. These papers were prepared by the attorneys employed by the delegation. The full delegation signed the contract of John T. Cochrane, and the full delegation signed the treaty of June 22, 1855. What Samuel Garland did individually or what any of the other delegates, except Peter P. Pitchlynn, did individually in aid of the prosecution of the net proceeds claim does not appear. The record shows that there was much more labor, expense, and difficulty required in procuring the passage of the jurisdictional act of March 3, 1881, and in securing the final judgment of the Court of Claims under said act than in securing the award of the Senate.

Up to the time of the death of Samuel Garland in the winter or spring of 1870, nothing beyond the Senate award of May 8, 1860, had been accomplished in the net proceeds claim. He first came to Washington in the spring of 1854 and was also there in 1855, 1856, and 1869.

Samuel Garland was paid out of the $250,000 appropriated by the act of March 2, 1861, the sum of $18,731.85. He was paid by order of the Choctaw Council by the acts of November 4, 1857; October 22, 1858; October 20, 1859; and October 27, 1860, the sum of $11,000. He was paid by Peter P. Pitchlynn $1,000, a total of $30,731.86. He was paid by Campbell Leflore and Edmund Mccurtain, the settlement of 1888, the sum of $49,894.29, making, in all, the sum of $80,626.15 in cash. Campbell Leflore and Edmund McCurtain paid the following liabilities of the delegation of 1853: $11,889.84, "paid delegates of 1866 on account with the delegates of 1853"; $7,758.36, "paid eastern boundary delegates as per con-

tract with delegates of 1953"; $25,000, "paid Blunt and loyal Choctaws as per agreement with delegates of 1853"; $107,626.50, "paid from memorandum of P. P. Pitchlynn," personal liability, not chargeable to Nation.

XVII

Samuel Garland, claimants' decendent, was a member of the Choctaw Tribe of Indians and a citizen and resident of the Choctaw Nation, in the Indian Territory, and departed this life during the year 1870, leaving a last will and testament by which he bequeathed to his wife, Mary P. Garland, his interest in a claim against the Choctaw Nation for services as a member of the delegation of 1853, referred to as the "net proceeds."

Said Mary P. Garland died in the year 1886 or 1887, leaving a last will and testament by which she bequeathed to her grandson, David Crockett Garland, one-third of all moneys due her from the United States Government or the Choctaw Nation to her deceased husband, Samuel Garland, for services rendered as delegate of the Choctaw Nation in the settlement of the net-proceeds claim; one-third of said moneys to her daughter, Mary Eliza Rogers, and the remaining one-third of said moneys, in equal shares, to the heirs of the said Mary Eliza Rogers, her grand children.

[fol. 18] Said Mary Eliza Rogers died intestate in 1906, leaving surviving her five children, Georgia C. McCaffree, Laura Cole, Leona Stealey, Minnie I. Thomas, and John M. Rogers. John M. Rogers is deceased, intestate, and without issue.

The interests of the heirs of the said Mary P. Garland in the "net proceeds" (who are the grandchildren and great-grandchildren of Samuel Garland and Mary P. Garland) are as follows: The heirs of David Crockett Garland are entitled to one-third and the heirs of Mary Eliza Rogers, as such and under the will of Mary P. Garland, are entitled to two-thirds of the fund.

David Crockett Garland departed this life on January 28, 1899, and left surviving him as his only heirs at law and next of kin his wife, Ellen Garland, and four children, Thomas A. Garland, Leonidas M. Garland, Margarett Garland, and Ellen Garland. Ellen Garland, wife of David C. Garland, and Ellen Garland, the daughter, are dead, the latter without issue. The heirs at law of the said David C. Garland are at present Thomas M. Garland, Leonidas M. Garland, and Margarett Ledbetter, nee Garland. Their interest in the "net proceeds" is one-ninth each.

Said Laura Cole departed this life and left surviving her as her only heirs at law and next of kin three children, Bonnie May Cole (now married to Doss), Rogers L. Cole and Presley B. Cole, and the present heirs and next of kin of said Laura Cole are Bonnie May Cole Doss, Rogers L. Cole, and Presley B. Cole. Their interest in the "net proceeds" is one-eighteenth each.

Said Leona Stealey departed this life and left surviving her as her only heirs at law and next of kin three children, Lorenzo P. Stealey, Goodwin B. Stealey, and Cathleen Stealey. Goodwin B. Stealey died intestate and without issue. The heirs of said Leona Stealey

are: Lorenzo P. Stealey and Cathleen Stealey. Their interests in the "net proceeds" is one-twelfth each.

Said Minnie I. Thomas, after the death of her husband, Ab Thomas, married William P. McBride, and thereafter departed this life, leaving surviving her as her only heirs at law and next of kin two children, Edward G. Thomas and Pleasant McBride. The heirs at law and next of kin of said Minnie I. Thomas are: Edward G. Thomas, and Pleasant McBride. Their interest in the "net proceeds" is one-twelfth each.

Georgia C. McCaffree is living, and her interest in the "net proceeds" is one-sixth.

Conclusion of Law

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiffs are not entitled to recover, and the petition is therefore dismissed.

Judgment is rendered against the plaintiffs for the cost of printing the record in this cause, the amount therefor to be entered by the clerk and collected by him according to law.

Opinion—Filed June 9, 1924

Booth, Judge, delivered the opinion of the court.

This case and the one of the Heirs of Peter Pitchlynn differ only as to the extent of the services rendered. The special jurisdictional [fol. 19] acts sending both cases to this court are identical in every respect, 35 Stat. 445. What was said in the Pitchlynn case with reference to the history and development of the controversy applies with equal force to the present case, and we will not repeat it herein.

The present plaintiffs, heirs of Samuel Garland, deceased, are contending for a judgment in the sum of $115,786.65 for his part in securing the final settlement of the net proceeds claim. This contention rests upon a conclusion that Samuel Garland is legally entitled to the full five percentum accorded him in the contract between the delegation of 1853, of which he was a member, and the Choctaw Nation, set out in Finding III.

The jurisdictional act limits recovery upon the principles of quantum meruit, what the services rendered were reasonably worth, and while the contract is evidentiary, it is not conclusive, and we are not bound to observe it, especially as entitling the heirs to have it enforced after the death of Samuel Garland. Congress manifestly refused to circumscribe our jurisdiction in this respect, and intended, as expressed in the jurisdictional act, to grant authority to award a judgment for what may appear from the record as equitably due.

Samuel Garland was a member of the Choctaw Nation, conspicuous at times in its affairs. He lacked many of the characteristics of Peter Pitch*h*lynn, his associate delegate, and was far from the equal of Pitchlynn in ability or assertiveness. Pitchlynn dominated the delegation of 1853 and was the moving force. Garland and the remaining delegates simply followed along. The plaintiffs, in their long,

very exhaustive, and interesting briefs in this case, do not point out any conspicuous individual service on the part of Garland. So far as the record discloses, Garland was only in Washington four times, once in 1854, and again in the years 1855, 1856, and 1869, and if he did more than approve what Pitchlynn was actively engaged in doing, we are unable to extract it from the present record. He, of course, was a part of the delegation, and his name appears in its proceedings, and the council of the Nation in its dealings with the delegation duly recognized him as a part thereof; but when the task is imposed of segregating the individual services of the plaintiffs' decedent from those of his associates and ascertaining what he did in the preparation of papers, supplying information, or suggesting plans and procedure, forwarding settlements, or manual and mental work of any character, it is most difficult to ascribe to Samuel Garland the doing of any vast amount of labor or contributing to the result accomplished to any predominating extent.

We awarded judgment in the Pitchlynn case, crediting him with his full five per centum of the sum realized in the net proceeds case, and we believe this to be ample, and in a measure generous, and if Garland was in the same situation we would do likewise in this case. Samuel Garland died in March, 1870, sixteen years prior to the final settlement of the claim, and obviously, unless we may ascribe what was accomplished prior to his death as the real, important, and substantial thing accomplished, we can not allow his estate for what was done after his death. The recovery sought here is for personal services. It is true Pitchlynn died in 1881, five years prior to the final judgment, but it seemed to us that at the time of his death all that he could have possibly accomplished had been done, and all that remained to be done depended upon lawyers and not laymen. Pitchlynn had exhausted the field of his endeavors.

[fol. 20] We may, we think, with propriety and fairness to all concerned, recognize the division of this contest as time and events apportioned it. According full recognition to Garland's efforts, the equal of Pitchlynn in this respect, what had been the real beneficial results obtained up to the date of Garland's death? The treaty of 1855 had been obtained, the Senate award had been reported in 1861, and $250,000 in cash had been paid and $250,000 in bonds awarded, but not then or afterwards paid until 1886. Then the Civil War came on, and for four or more years nothing was done. The next step was the treaty of April, 1866, procured by the commission appointed by the Nation in October, 1865, a treaty repairing the damage occasioned the Indians by the intervention of war and restoring the rights accorded the Nation in the treaty of 1855, thus completing, as we believe we may well say, the first half of the contest. To secure the benefits of the treaty of 1855, revived by the one of 1866, required twenty years of labor and effort. The treaty of 1866 marked out the limits of settlement, the Senate in its award followed the lines so marked out, and there the two factors stood definite and available, but to secure appropriations and a fulfillment of the treaty and award required an effort and expenditure of labor and service equally as extensive as all that had been expended in prior efforts. The

repeated and earnest efforts of a small army of people, directed in every available channel, failed to secure to the Nation its accorded rights until the contest was removed from the uncertainties of the departmental and legislative departments of the Government to the courts, where it was ultimately settled with reasonable dispatch. Unfortunately Samuel Garland died before the final struggle had taken definite shape; he was not a part of it, and surely it may not be said that what was done subsequent to 1866 was relatively of less importance than what preceded this date. One was indeed as important as the other. As we said in the Pitchlynn case, we regard the services rendered in finally procuring the jurisdictional act sending the case to the courts as one of signal value and importance. It closed the case; it afforded a forum where reciprocal rights and liabilities might be adjudicated, where the parties were assured of full and complete hearing, and what is of more value, assured the parties that a judgment rendered would be promptly and fully paid. This was accomplished eleven years after Samuel Garland's death.

It is said, and most significantly, that the authorities of the Nation as late as 1888 recognized the Nation's liability to Samuel Garland as extending to five per centum of the final sum obtained, in effect conceding his services to be worth this amount. The legislation of the council appointing Leflore and McCurtain delegates to receive and disburse the money coming to the Nation as a result of the judgment in the net proceeds case, clearly imports a legislative intent to settle with the delegates of 1853 and their successors. The language is, "settle with the respective distributees of said delegation." The delegation, as originally established, was a continuing body; provision was made for vacancies due to death or resignation, vacancies did occur, and the personnel of the delegation changed. So that while Leflore and McCurtain did treat the Garland estate as entitled to the full one-fifth of the judgment, they, at the same time, made a vast number of charges against his gross compensation, which included [fol. 21] money paid to delegates, successors to the original delegation. Again, we repeat, under the jurisdiction granted this court, we are not to import verity to what Leflore and McCurtain did, nor are we bound to accept their settlement or interpretation of the authority under which they acted. The case is to be disposed of upon the principles of quantum meruit, and what concerns the court now is not a confirmation of Leflore and McCurtain's settlement, but was the sum the Garland estate received from them, added to other sums paid, reasonably compensatory for Garland's services during his life? The Supreme Court in the Garland case, 256 U. S. 439, had before it in the findings of this court the Leflore and McCurtain settlement, it was then exactly as it is now, and notwithstanding these available balances, the case was remanded for us to find, "What, if anything, is due Garland." If the record of fraud and corruption erected by the plaintiffs' counsel is to prevail, and we have not the slightest doubt of its truthfulness, the case with which the legislative council of the Nation yielded to sinister influence is, indeed, a most potent factor in supporting the court in scanning what was done with the greatest care, and casts an unwholesome suspicion upon Choctaw legislation

and council approvals of the disbursements of Indian funds. In this case, without apparent opposition, and with a unanimity acutely suspicious, the council of the Nation, whenever called upon, unhesitatingly approved the disbursement of more than one-half of the net proceeds judgment, a vast sum of money, which in many instances found its way into the pockets of certain individuals whom the committee of Congress denounced as nothing short of venal and corrupt.

We have not, of course, disregarded these favorable manifestations in Garland's behalf. We have given them, along with the contract, the probative value we think they are entitled to receive. If they are conclusive, then obviously all we are to do under the order of remand was a bookkeeping accounting. This has not been our view of the case, nor our construction of the intention of Congress in conferring jurisdiction upon this court in the premises.

Samuel Garland received out of the $250,000 cash appropriated by Congress in March, 1861, $18,731.86. The Choctaw Council, by its appropriation acts for the years 1857, 1858, 1859, and 1860, paid him $11,000, or in all $29,731.86 received by him personally. After his death, under the settlement of Leflore and McCurtain, his estate received an additional allowance of $49,894.29, or $79,626.15 in all. He should be charged with one fourth of $25,000 loaned by the loyal Choctaws to the delegation of 1853 and which they in writing agreed and authorized payment out of the fees paid the delegation from the net-proceeds case, which amounts to $6,250, a sum of money the delegates received, and the record shows they admitted as due from them, making all told the sum of $85,876.15 paid as remuneration for his services. It is absolutely inconceivable that he could have earned more. Expenses incurred are not claimed, and are proved to have been paid. Treating the case on the principles of quantum meruit, aside from contract provisions, and giving the record the most liberal consideration, it is our opinion that the petition should be dismissed. It is so ordered.

Hay, Judge; Downey, Judge; and Campbell, Chief Justice, concur.

[fol. 22] IV. JUDGMENT OF THE COURT—File June 9, 1924

At a Court of Claims held in the City of Washington on the 9th day of June, A. D., 1924, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the defendant, and do order and adjudge that the plaintiffs, as aforesaid, are not entitled to recover and shall not have and recover any sum in this action of and from the Choctaw Nation; and that the petition herein be and the same is dismissed. No printing having been done by the court in this action no costs are taxed.

By the Court.

V. Proceedings After Entry of Judgment

On September 15, 1924, by leave of court, the plaintiffs filed a motion — a new trial and for additional findings of fact.

On October 28, 1924, the court entered the following order on plaintiffs' motion:

Order Overruling Motion for New Trial—Filed Oct. 28, 1924

It is ordered by the Court this 28th day of October, 1924, that the plaintiffs' motion for new trial be and the same is overruled.

VI. Plaintiffs' Application for Appeal—Filed November 24, 1924

Comes plaintiffs, by attorney, and respectfully prays allowance of an appeal to the Supreme Court of the United States from the judgment of this Court dismissing the petition herein.

W. N. Redwine, Attorney for Plaintiffs. Harry Peyton, of Counsel.

VII. Order of Court Allowing Application for Appeal—Jan. 19, 1925

It is ordered by the Court this 19th day of January, 1925, that the plaintiffs' application for appeal be and the same is allowed.

[fol. 23] Clerk's Certificate

[Title omitted]

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the mandate of the Supreme Court remanding the case for further proceedings; of the argument and submission of case; of the findings of fact, conclusion of law and opinion of the court by Booth, J.; of the judgment of the court; of the proceedings after the entry of judgment; of the plaintiffs' application for appeal; of the order of the court allowing plaintiffs' application for appeal, in the above-entitled cause.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this 6th day of February, A. D., 1925.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. (Seal of Court of Claims.)

Endorsed on cover: File No. 30,879. Court of Claims. Term No. 284. The Heirs of Samuel Garland, deceased, appellants, vs. The Choctaw Nation. Filed February 19th, 1925. File No. 30,879.

No. 42

In the Court of Claims

(Reprint)

No. 30252.

HEIRS OF SAMUEL GARLAND, Deceased, Plaintiffs,

vs.

THE CHOCTAW NATION, Defendant.

Petition

Filed Sept. 3, 1908.

W. N. REDWINE,
Attorney.

SMITH-GRIEVES, LAW PRINTERS, KANSAS CITY, MO.

(Reprint)
(Exhibits Omitted.)

1 I. *Petition.*

Filed Sept. 3, 1908.

In the Court of Claims.

No. 30252.

THE HEIRS OF SAMUEL GARLAND, Deceased, Plaintiffs,

vs.

THE CHOCTAW NATION, Defendant.

To the Honorable Chief Justice and Judges of the Court of Claims

Your petitioners, the heirs of Samuel Garland, deceased, respectfully represent:

1. That by act of Congress approved May 29, 1908, in section 5, it was provided as follows:

"Sec. 5. That the Court of Claims is hereby authorized and directed to hear and adjudicate the claims against the Choctaw Nation of Samuel Garland, deceased, and to render judgment thereon in such amounts, if any, as may appear to be equitably due. Said judgment, if any, in favor of the heirs of Garland shall be paid out of any funds in the Treasury of the United States belonging to the Choctaw Nation, said judgment to be rendered on the principle of quantum meruit for services rendered and expenses incurred. Notice of said suit shall be served on the Governor of the Choctaw Nation and the Attorney-General of the United States shall appear and defend in said suit on behalf of said Nation." (35 Stat L. Pt. 1. P. 445.)

2 2. That Samuel Garland was a member of the Choctaw tribe of Indians of the Choctaw Nation, Indian Territory, and on the 9th day of November, 1853, there was created by the Legislative Assembly of said Choctaw Nation a delegation authorized and empowered by said act to settle all of the unsettled business between said Choctaw Nation and the United States; that said delegation appointed by the aforesaid act of the Choctaw Council was composed of the following members: Samuel Garland, Peter P. Pitchlynn, Israel Fulsom, and Dixon W. Lewis. A copy of said act is hereto attached, marked Exhibit "A," and made a part hereof.

3. That acting under said act of the Choctaw Council said Samuel Garland and the other members of the delegation heretofore appointed by said act of the Choctaw Council entered into negotiations with the United States Government for a settlement

of the unsettled claims pending between the Choctaw Nation and the United States arising out of the treaties of 1820 and 1830 between the United States and the Choctaw Tribe of Indians.

The treaty of 1820 was entered into at Doakes Stand on October 18th, 1820 (7 Stat. L., 210). The treaty of 1830 was entered into at Dancing Rabbit Creek, September 27, 1830 (7 Stat. L., 333). It was claimed by the Choctaw Nation that the United States Government had not complied with several of the provisions of the aforesaid treaties, and as a result of said nogotiations on the part of the Choctow Nation through its delegation, to wit: Samuel Garland et al., a new treaty was entered
3 into between the Choctaw Nation and the United States Government at the City of Washington on June 22, 1855, under the terms of said treaty provision was made for the settlement of all disputed claims between the Choctaw Nation and the United States, said treaty being signed on the part of the Choctaw Nation by Samuel Garland and the other three delegates appointed under said act of the Choctaw council; Sections 11 and 12 of the treaty of June 22, 1855, provided for the settlement of all disputed claims between the Choctaw Nation and the United States, said Sections 11 and 12 of the aforesaid treaty reads as follows, to wit:

Article 11.

"The Government of the United States, not being prepared to assent to the claim set up under the treaty of September the twenty-seventh, eighteen hundred and thirty, and so earnestly contended for by the Choctaws as a rule of settlement, but justly appreciating the sacrifices, faithful services, and general conduct of the Choctaw People, and being desirous that their rights and claims against the United States shall receive a just, fair, and liberal consideration; it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States:

First. Whether the Choctaws are entitled to, or shall be allowed the proceeds of the sale of the lands ceded by them to the United States, by the treaty of September the twenty-seventh, eighteen hundred and thirty, deducting therefrom the cost of their survey and sale, and all just and proper expenditures and
4 payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws to the lands remaining unsold, in order that a final settlement with them may be promptly effected, or,

Second. Whether the Choctaws shall be allowed a gross sum, in further and full satisfaction of all their claims, national and individual, against the United States; and, if so, how much.

Article 12.

"In case the Senate shall award to the Choctaws the net proceeds of the lands ceded as aforesaid, the same shall be received by them in full satisfaction of all their claims against the United

States, whether national or individual, arising under any *any* former treaty; and the Choctaws shall thereupon become liable and bound to pay all such individual claims as may be adjudged by the proper authorities of the tribe to be equitable and just—the settlement and payment to be made with the advice and under the direction of the United States Agent for the tribe, and so much of the fund awarded by the Senate to the Choctaws as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just liabilities of the tribe shall, on their requisition, be paid over to them by the United States. But should the Senate allow a gross sum in further and full satisfaction of all their claims, whether national or individual, against the United States, the same shall be accepted by the Choctaws, and they shall thereupon become liable for, and bound to pay, all the individual claims as aforesaid; it being expressly understood that the adjudication and decision of the Senate shall be final."

5 4. That thereafter, to-wit: on the 21st day of November, 1855, in recognition of the services rendered by said delegation in negotiating the treaty of June 22, 1855, and for services thereafter to be rendered by said delegation for representing the Choctaw Nation in adjusting the claims of the Choctaw Nation between the United States, and making final settlement between said Nation and the United States, the following contract on the part of the Choctaw Nation was made and entered upon the official records of the Choctaw Nation and duly approved by the Choctaw Council, which contract reads as follows:

The Contract.

"We, the undersigned chiefs, do hereby agree that the delegation, viz: Samuel Garland, P. P. Pitchlynn, Israel Folsom and Dixon W. Lewis, shall receive twenty per cent. upon all claims arising or accruing to this Nation or to individuals under the treaty of June 22, 1855, for their services in negotiating said treaty and for other services which are to be rendered hereafter at Washington. But it is directly understood and agreed upon that said delegation are to receive no fees for the lease money nor from the funds which the Chickasaws are to pay for jurisdiction granted them in the treaty.

"In testimony whereof, we hereunto set our hands and seals.

ALLEN WRIGHT,
P. C., C. N.
N. COCHANAUER, [SEAL.]
GEORGE W. HARKINS,
Dis. Chfs.

"Given this, the 21st day of November, 1855. Approved as required by the third section of the schedule of the Constitution, this the 18th day of October, 1868."

6 That under the provisions of said contract said Samuel Garland, deceased, and the other members of said delega-

tion continued to represent the Choctaw Nation and adjust the claims of said Nation with the United States; that under the provisions of the 11th Article of the Treaty of June 22, 1855, as aforesaid, there was submitted to the Senate of the United States a statement of the claims and demands of the Choctaw Nation, together with supporting evidence, and said Samuel Garland prepared and assisted in preparing said statement and evidence filed in support thereof and presented and assisted in presenting the matter before the Senate of the United States, and as a result of said presentation the Senate of the United States on March 9, 1855, passed a resolution allowing the Choctaws the proceeds of the sale of certain lands claimed by said Choctaws, which had been sold by the United States up to January 1, 1859, less the cost of survey and sale, and such other expenditures as had heretofore been made by the United States and the Senate by resolution called on the Secretary of the Interior for an account stated; that in compliance with the resolution of the Senate, the Secretary of the Interior caused an account to be stated betweed the United States and the Choctaw Nation, and said account as stated showed that the United States was indebted to the Choctaw Nation in the sum of $2,981,247.30, the same being the net proceeds of the land sold by the United States and obtained from the Choctaw Nation after the treaty of 1830, less the cost of survey and sale, and said amount as so determined was
7 the basis of the judgment subsequently obtained, by the Choctaw Nation against the United States.

5. That by act of Congress of March 2, 1861, there was paid to the Choctaw Nation $250,000 the same being in substance and effect a payment on account for the amount found due by the Senate, and was the direct result of the labors of the said Samuel Garland and *and* other members of said delegation.

6. That thereafter the rights of the Choctaw Nation to the payment of the amounts due from the United States were diligently prosecuted in the Court of Claims and the Supreme Court of the United States by said Samuel Garland and the other delegates during the lifetime of said Samuel Garland, and as a result of said prosecution a judgment was rendered by the Court of Claims and an appeal prosecuted to the Supreme Court of the United States, and on November 15, 1886, said case was decided (119 U. S., page 1), against the United States, and judgment was rendered in favor of the Choctaw Nation as follows:

First, for lands sold by the United States claimed by the Choctaw Nation, less the cost of survey and sale, two million nine hundred eighty-one thousand, two hundred forty-seven and 30-100 ($2,981,247.30) dollars, subject to the deduction of two hundred fifty thousand ($250,000) dollars paid under the Act of Congress of March 2, 1861.

Second. For unpaid annuities, $59,449.32:

Third. For lands taken in fixing the boundary between the State of Arkansas and the Choctaw Nation, $68,102.00,
8 making a total balance due the Choctaw Nation, $2,858,-798.62.

7. That by Act of Congress passed June 29, 1888, Congress of the United States appropriated two million eight hundred fifty-eight thousand, seven hundred ninety-eight and 62-100, ($2,858,798.62) dollars, together with interest at the rate of 5 per cent. per annum from the 6th day of December, 1886 to June 29, 1888, the same being two hundred nineteen thousand, five hundred seventy-one and 61-100 ($219,571.61) dollars, making a total sum of three million seventy-eight thousand, three hundred seventy-one and 23-100 ($3,078,371.23) dollars in payment of the judgment heretofore referred to, a copy of said act of Congress making said appropriation is as follows, to wit:

Section 9 of the act of Congress approved June 29th, 1888 (25 Stat. L. P., 239).

"That for payment to the Choctaw Nation of two million eight hundred fifty-eight thousand, seven hundred ninety-eight and 62-100 ($2,858,798.62) dollars, the said sum being the amount of the judgment rendered in favor of said Nation by the Court of Claims on the 15th day of December Anno Domini, eighteen hundred and eighty-six, on a mandate issued by the Supreme Court at the October term of said court together with such further sum as may be necessary to pay the interest on said judgment at five per cent. per annum, from the date of the presentation of the transcript of said judgment to the Secretary of the Treasury for payment."

That on the 25th day of February, 1888, the Choctaw Council on account of the death of Samuel Garland, and the other delegates, and for the avowed purpose of paying the estate of Samuel Garland and the other members of said delegation, appointed Campbell LeFlore and Edmund McCurtain as the Agents, of the Choctaw Nation to make requisition upon the United States for the amount due the said Samuel Garland and the other delegates under the contract, and for the services rendered said Nation, and for monies expended by said delegates as expenses incurred in representing the Nation, said act reads as follows:

"Be it enacted by the General Council of the Choctaw Nation assembled, that the principal chief be and is hereby authorized and directed for and in behalf of the Choctaw Nation to make requisition upon the proper authorities of the United States in such form as may be required by such authorities for the payment to Campbell LeFlore and Edmund McCurtain, as delegate successor to P. P. Pitchlynn, Samuel Garland, and others, or to their order, the sum of twenty (20) per cent. of whatever may be appropriated by Congress in payment of the judgments of the Court of Claims in favor of the Choctaw Nation rendered on the 15th day of December, 1886, and in addition thereto the sum of twenty-three thousand three hundred and ninety-five and 39-100 ($23,395.39) dollars, the same to be paid in such sums and at such times and places as shall be requested by the said LeFlore and McCurtain, less 10 per cent on $1,500.00, and such requisitions when made shall be taken and accepted as is hereby required by the twelfth article of the treaty of 1855.

Be it further enacted that this act take effect and be in force from and after its passage.

BENJ. WOODS,
Chairman Committee.

Approved, February 25, 1888,
THOMPSON McKINNEY,
"Principal Chief, C. N."

That the sum of twenty-three thousand three hundred ninety-five and 39-100 ($23,395.39) dollars referred to in the foregoing Act was the amount which the said Samuel Garland and the other delegates had paid in expenses for and on behalf of the Choctaw Nation, and found due them in settlement by the Choctaw Nation, Nov., 1861, said amount not having been paid or refunded to Samuel Garland and the other three delegates at the time LeFlore and McCurtain were appointed delegates under the aforesaid Act of the Choctaw Council; the above amount, to-wit, twenty-three thousand three hundred and ninety-five and 39-100 ($23,395.39) dollars was to be added to 20 per cent on three million, seventy-eight thousand, three hundred seventy-one and 23-100 ($23,078,371.23) dollars, less 10 per cent. on fifteen hundred ($1,500.00) dollars, making a total of sum due said delegates, to-wit, six hundred thirty-eight thousand, nine hundred nineteen and 43-100 ($638,919.43) dollars.

8. That the appointment of Campbell LeFlore and Edmund McCurtain by the Choctaw Council was without the consent, either express or implied, by the heirs of Samuel Garland, or any person authorized to act for the estate of Samuel Garland, and said Campbell LeFlore and Edmund McCurtain were appointed by the Choctaw Nation as its agents to collect from the United States the 20 per cent. of the judgment in favor of the Choctaw Nation and pay the same to the heirs of Samuel Garland and the other delegates, as aforesaid: said 20 per cent. together with the above unpaid expenses being the amount due said delegation for services performed and rendered by them.

9. That said Campbell LeFlore and Edmund McCurtain, agents of the Choctaw Nation, under and by virtue of the authority vested in them as agents, collected from the United States Government the sum of six hundred thirty-eight thousand, nine hundred nineteen and 43-100 ($638,919.43) dollars, the same being 20 per cent. of the judgment rendered in favor of the Choctaw Nation, together with twenty-three thousand three hundred ninety-five and 39-100 ($23,395.39) dollars, less 10 per cent. of fifteen hundred ($1500.00) dollars; said Campbell LeFlore and Edmund McCurtain were charged with the duties of distributing said funds equally; that in the month of February, 1889, at Fort Smith, Arkansas, the said Campbell LeFlore paid to the heirs of Samuel Garland the sum of forty-three thousand nine hundred forty-three and 20-100 ($43,943.20) dollars, but wholly failed, neglected, and upon demand refused to pay the balance due said heirs of Samuel Garland, the amount due said heirs being one-

fourth of six hundred thirty-eight thousand, nine hundred nineteen and 43-100 ($638,919.43) dollars, or one hundred
12 fifty-nine thousand, seven hundred twenty-nine and 85-100 ($159,729.85) dollars; after deducting the amount paid, to wit: forty-three thousand nine hundred forty-three and 30-100 ($43,943.30) dollars, there remained due and unpaid the heirs of Samuel Garland the sum of one hundred fifteen thousand, seven hundred eighty-six and 65-100 ($115,786.65) dollars, which sum was then due and payable from the Choctaw Nation to the heirs of Samuel Garland, deceased, and the same remains yet due and unpaid, with legal interest thereon at the rate of 5 per cent. per annum from the 12th day of August, 1889, to final judgment in this case.

The Choctaw Nation has never denied the indebtedness to the estate of Samuel Garland, deceased, but has always recognized said claim of the heirs of Samuel Garland, and acknowledged that the same was a just claim and that it ought to be paid; said Nation recognizing the fact that said Samuel Garland was one of the most able statesmen that the Choctaw Nation ever had; that he gave his entire life, from 1853 until his death in 1870, in settling the claims that the Choctaw Nation had against the United States. He spent the most of his time at Washington in looking after the Choctaw Nation's business, and by reason of giving his entire time to the interest of the Choctaw Nation he was deprived of remaining at home, wherein he would have accumulated other property for his family.

Said Choctaw Nation, having great confidence in the ability and integrity of said Samuel Garland and the other dele-
13 gates, imposed upon them additional duties by act of the Choctaw Nation, approved October 27, 1858, a copy of which act is hereto attached and marked Exhibit "B." Said act reads as follows, to-wit:

"Resolutions Directing the Choctaw Delegation to Washington City to Bring About a Settlement of all Matters Arising in Relation to the Eastern Boundary of the Choctaw Nation.

"Resolved by the General Council of the Choctaw Nation, that Samuel Garland, Peter Folsom, P. P. Pitchlynn and Israel Folsom, who compose the Choctaw delegation to Washington City, be and they are hereby requested, authorized and fully empowered, in addition to the powers they already possess in behalf of this Nation, to take into consideration all matters arising in relation to the running of the eastern boundary line of the Choctaw Nation by direction of the Government of the United States during the present year, and determine and agree upon the compensation to be allowed by the Government of the United States, in consideration of that portion of the territory of this Nation found to be within the limits of the State of Arkansas.

"Be it further resolved, that this resolution take effect and be in force from and after its passage."

"Approved 27th October, 1858."

Said Choctaw Nation, recognizing the justness of the aforesaid claim and the valuable services rendered by said Samuel Garland during his lifetime, passed an act on the 8th day of October, 1897, authorizing the payment of the aforesaid claim, which act reads as follows, to-wit:

14 "An Act Appropriating the Balance Due the Heirs of Samuel Garland, Deceased, Delegate of 1853.

Be it enacted by the General Council of the Choctaw Nation Assembled:

Sec. 1. That the sum of one hundred and fifteen thousand seven hundred eighty-six and 65-100 ($115,786.65) dollars be and is hereby appropriated out of any funds in the National Treasury, not otherwise appropriated, to pay the balance due the heirs of Samuel Garland, deceased, delegate of the Choctaw Nation of 1853, by reason of his contract entered into on the 21st day of November, 1855, by and between the Choctaw Nation and the said Samuel Garland, P. P. Pitchlynn, and others, in collection of what is known as the net proceed claim.

Sec. 2. Be it further enacted that the National Auditor of the Choctaw Nation is hereby directed to issue his warrant for same in favor of Mary E. Rogers, D. C. Garland, Georgia Brice, nee Rogers, Minnie McBride, nee Rogers, Laura Cole, nee Rogers, Leona Stealy, nee Rogers, and John M. Rogers, heirs of the said Samuel Garland, deceased, and the National Auditor his hereby directed to pay the same.

Sec. 3. Be it further enacted that this act shall take effect and be in force and effect from and after its passage.

Endorsed: Solomon Mackey, signed, Solomon Mackey, a member of the House of Representatives. Passed the House on this 8th day of October, 1897.

WILLIE MARTIN,
Speaker.

15 Referred to the Senate on the 8th day of October, 1897.
Passed the Senate on this the 8th day of October, 1897.

JULIAS HAMPTON,
President of the Senate.

This act was vetoed by the Principal Chief of the Choctaw Nation for the reason that it would exhaust the available funds in the Treasury of the Nation and would force the suspension of the Choctaw schools by appropriating the above amount at that time. The heirs of Samuel Garland have continued to demand payment and to seek by legal methods the collection of said amount at all times and in all proper and legal ways up to and including the date of this petition, but the heirs of Samuel Garland had no court with jurisdiction of the Choctaw Nation in which to commence suit until the Act of Congress was passed on the 29th day of May, 1908, above referred, giving said heirs the right to commence said action in the Court of Claims of the United States. The Choctaw Nation cannot be sued without a

Special Act of Congress granting such right as the Choctaw Nation "is not a sovereign State, but is a domestic and dependent State subject to the jurisdiction and authority of the United States; being a domestic and dependent State, the Unied States may authorize suit to be brought against it." (Thebo vs. The Choctaw Tribe of Indians, 13 "C. C. A.," 519.)

That by reason of the Choctaw Nation not being subject to suit without an act of Congress, the heirs of Samuel Garland could not bring suit against said Nation until legislation was ob-
16 tained permitting them to do so; however, said heirs have worked diligently to secure said legislation since the act of the Choctaw Council appropriating the aforesaid sum was vetoed by the Chief of the Choctaw Nation for the reasons heretofore stated.

The heirs of Samuel Garland, deceased, are as follows, to-wit: Ellen Garland (an adult), and her minor children, to-wit: Thomas A. Garland, Leonidas M. Garland, Margritte Garland and Ellen Garland; Bonnie May Cole, Rogers L. Cole, Presley B. Cole, Jr., minors; Edward Garland Thomas, a minor, Pleasant McBride, a minor, Goodwin B. Stealey, Laurenzo P. Stealey, Cathleen Stealey, minors, John M. Rogers (an incompetent, adult), Georgia McCaffree (an adult).

The aforesaid named heirs of Samuel Garland, deceased, are the petitioners in this action, and they derive their interest in the aforesaid claim as follows, to-wit: That in the latter part of the year 1870 said Samuel Garland departed this life, and before his death he made and executed a will by which he bequeathed and devised unto his wife, Mary P. Garland, all of his interest in the aforesaid claim, a copy of said will is hereto attached and marked Exhibit "C," and made a part hereof; and thereafter, to-wit: About the year 1887 said Mary P. Garland departed this life, and before her death she made and executed a will by which she bequeathed and devised all her interest in and to the above-named claim as follows, to-wit: To her grandson, David C. Garland, a one-third interest; to her daughter, Mary Eliza Rogers, (nèe Garland), a one-third interest;
17 to the heirs of Mary Eliza Rogers (nèe Garland), a one-third interest, said heirs of Mary Eliza Rogers (nèe Garland) then consisting of five living children, said children's names being as follows, to-wit:

Georgie McCaffrey (nèe Rogers, nèe Bride), Laura Rogers, Leona Rogers, Minnie I. Thomas (nèe Rogers), and John M. Rogers. A copy of said will is hereto attached and marked Exhibit "CC."

Thereafter, and about the year 1900, said D. C. Garland departed this life leaving surviving him his widow, Ellen Garland, and their minor children, to-wit: Thomas A. Garland, Leonidas M. Garland, Margritte Garland and Ellen Garland. Said Ellen Garland (an adult) joins in this suit for herself and as legal guardian of her above-named minor children, a copy of said

letters of guardianship will be hereto attached and marked Exhibit "D" and "E," and made a part hereof.

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Said Laura Rogers married Preslie B. Cole, and there was born to them as the issue of said marriage, the above named children, to-wit: Bonnie May Cole, Rogers L. Cole, Presley B. Cole, Jr., and about the year 1902 said Laura Cole (nèe Rogers) departed this life leaving surviving her, her husband, Preslie B. Cole, and the aforesaid minor children; said Preslie B. Cole joins in this suit for and on behalf of Bonnie May Cole, Rogers L. Cole, and Preslie B. Cole, Jr., minors, as their natural guardian and next friend;

Minnie I. Rogers married Ab. Thomas, and as the issue
18 of said marriage there were two children born, to-wit: Jennie Thomas and Edward Garland Thomas; thereafter Ab. Thomas departed this life leaving surviving him his said wife and the two minor children aforesaid; and thereafter said Minnie I. Thomas married William P. McBride, and as the issue of said marriage one child was born, to-wit: Pleasant McBride; and thereafter said Minnie I. McBride departed this life leaving surviving her, her husband, William P. McBride, and her three minor children, to-wit: Jennie Thomas, Edward Garland Thomas and Pleasant McBride; and thereafter said Jennie Thomas departed this life, leaving surviving her, her brother, Edward C. Thomas, and half-brother, Pleasant McBride, William P. McBride joins in this suit as natural guardian and next friend of Pleasant McBride, and as legal guardian of Edward Garland Thomas, Minors, and as administrator of the estate of Jennie Thomas, deceased, a copy of said letters of guardianship and administration will be hereto attached and marked Exhibits "F" and "G," and made a part hereof.

Leona Rogers married C. L. Stealey, and as the issue of said marriage there were three children born, to wit: Goodwin B. Stealey, Laurenzo P. Stealey, Cathleen Stealey, and thereafter, and about the year 1900 Leona Stealey departed this life leaving surviving her husband, C. L. Stealey and the aforesaid named children; said C. L. Stealey joins in this suit for and on behalf of Goodwin B. Stealey, Laurenzo P. Stealey, and Cathleen Stealey, minors, as their natural guardian and next friend.

John M. Rogers (an incompetent), joins in this suit by
19 Walter Rogers, as his legal guardian, a certified copy of said letters of guardianship is hereto attached and marked Exhibit "1" and made a part hereof.

Georgia McCaffree (an adult), joins in this suit for herself.

Wherefore, your petitioners, the heirs of Samuel Garland, deceased, pray that they have and recover of and from the Choctaw Nation the sum of one hundred and fifteen thousand and seven hundred and eighty-six and 65-100 ($115,786.65) dollars, and interest on the above amount at the rate of 5 per cent. per annum from the 12th day of August, 1888, until final judgment in this case, and that said petitioners and heirs as aforesaid

have such further relief as may be proper and just under the law and facts in this case.

THE HEIRS OF SAMUEL GARLAND,
DECEASED,
By W. N. REDWINE,
Attorneys for the Heirs of Samuel Garland, Deceased, the Petitioners Herein.

UNITED STATES OF AMERICA,
State of Oklahoma,
Pittsburg County:

Preslie B. Cole, one of the plaintiffs herein, after being duly sworn, deposes and says that the matters and things herein contained which of his own knowledge are true and correct, and that the matters and things herein contained, on information and belief are true and correct, as he verily believes.

PRESLIE B. COLE.

Subscribed and sworn to before me this the 31st day of August, 1908.

L. M. PEAK,
Notary Public.

Commission expires August 3, 1912.

In the Supreme Court of the United States

October Term, 1926.

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No. 42.

THE HEIRS OF SAMUEL GARLAND, *Appellants*,

vs.

THE CHOCTAW NATION, *Appellee*.

Appeal from the Court of Claims.

APPELLANTS' STATEMENT OF CASE, ASSIGNMENT OF ERRORS, BRIEF AND APPENDIX.

HARRY PEYTON,
Attorney for Appellants.

SMITH-GRIEVES LAW PRINTERS KANSAS CITY MO

INDEX.

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APPELLANTS' STATEMENT OF CASE, ASSIGNMENT OF ERRORS, BRIEF AND APPENDIX.

No. 42.

STATEMENT OF CASE.

It may be stated, preliminary to any other statement, that the interpretation of the decision of this court (*Garland* v. *Choctaw Nation,* 256 U. S. 439), is one of the questions herein involved. This phase of the case will be discussed later on in the brief. (*Infra,* p. 34.)

The claim arises out of a commission given appellants' ancestor, Samuel Garland, and three other "delegates" by act of the Choctaw Nation, November 9th, 1853, grant-

ing them full power to settle and dispose of by treaty or otherwise "all and every claim and interest of the Choctaw people against the United States." (Finding II, p. 2 Rec.)

It is there stated that this act is set out in an appendix to the brief, but as it was omitted, we set it out as No. 1 in the appendix hereto.

On November 10, 1854, the Choctaw Council passed a resolution authorizing the said delegation "to enter into any and all contracts which in their judgment are or may become necessary and proper, in the name of the Choctaw people, to bring to a final and satisfactory adjustment and settlement of all claims or demands whatsoever which the said Choctaw tribe, or any member thereof, has against the United States or otherwise." (Finding II, bottom p. 2 Rec.)

Contracts were made first with John T. Cochran and then with Pike, attorneys, upon a 30 per cent contingent fee basis, their employment being to aid and assist the delegates in the prosecution of the claims mentioned. (*Ibid,* p. 3.)

At that time there was no understanding, so far as the record shows, that the delegates were to receive compensation for their services. There was an understanding between Pitchlynn and Cochran that 15 per cent of the 30 per cent should be paid to him on his receipt and distribution made by him of this 15 per cent "as justice and equity demands."

In the Pitchlynn case it is intimated that possibly there was something reprehensible in this agreement of Pitchlynn's, but this intimation is wholly groundless, as this arrangement was supplemented November 1, 1855, by a contract between the nation and the delegates whereby they were to receive 20 per cent. Thereafter, at all times, until there was a final settlement between the delegates

and the nation, in 1888, the delegates stood upon their contract for 20 per cent and the attorneys upon theirs for 30 per cent, both being recognized and approved by the nation time and again.

On *November 4, 1854,* the council passed an act directing the delegates "*to remain in Washington,* and to continue *to press the final settlement* all claims of the Choctaw Nation etc." (Laws Choctaw Nation 1869, pp. 133, 134.)

On June 22, 1855, a treaty was negotiated between the Choctaw Nation and the United States, the treaty being signed by the delegates, P. P. Pitchlynn, Samuel Garland, Dixon W. Lewis and Israel Folsom, on behalf of the nation (II Stat. L., pp. 611-619). As a result of this treaty there was, all told, paid to the Choctaw Nation by the United States *more than four million dollars,* as will be presently shown.

Thus had these delegates, with the *assistance* of their attorneys, accomplished, within less than two years, what the Nation had been unable to accomplish since the date they migrated to their new homes from east of the Mississippi.

November 17, 1855, the Choctaw Council passed a resolution reciting that the report of the proceedings of the delegates at Washington having been fully examined that the same be hereby approved. Laws Choctaw Nation 1869, p. 143.

This resolution is important as the court finds that insofar as it is advised, that all the delegates (other than Pitchlynn) did, *was to go to Washington and sign the treaty.*

On the same day the council passed another resolution to this effect:

> "Be it resolved, etc. That the delegates *who negotiated the treaty of June 22, 1855,* be instructed

> to proceed to Washington as soon as possible, and full power is hereby given them, or to such of them as may be in Washington, to close up as speedily as possible the business *they* have commenced." (Italics mine.) (Laws Choctaw Nation 1869, p. 143.)

It is difficult to discuss with patience the position taken by the court that "all the delegates, (other than Pitchlynn) did *was to go to Washington and sign the treaty.*"

On the 9th of November, 1855, a contract was entered into between the delegates and the nation, whereby it was agreed that the delegates were to receive 20 per cent upon all claims arising or accruing to the Nation or to individuals under the treaty of 1855 except for lease money or funds received from the Chickasaws. (Finding III p. 4 Rec.)

Unless the purpose of the court was to cast some doubt upon the legality of the contract because of the assumption that it was not approved by the Principal Chief, at the time the contract was made, or because it "was found among the records in the office of the national secretary," we do not understand the relevancy of these findings, as the contract was expressly approved in 1868 by the Principal Chief, was confirmed by the act of 1860, and again confirmed by the acts of 1867, 1873 and 1888. If "found" among the records of the National Secretary, it was "found" where it rightfully belonged and is not therefore a foundling.

It is important, here, as we proceed with the records of the Choctaw Nation—settlements with the delegates and acts of the National Council—to note that the court gives Garland and his co-delegates practically no credit for securing the treaty of 1855, which was the basis of the recovery by the Choctaw Nation from the United States of more than four million dollars, as stated. (*Infra.*, p. 11.)

In 1854, the delegates were directed by act of the Council (Laws Choctaw Nation, 1869, pp. 133, 134) to *remain* in Washington and press the claims of the Choctaws and in June, 1855, Garland was in Washington and signed the treaty of that date. That he and his associates *did* remain in Washington and that they *did* negotiate the treaty, is shown by numerous acts of the council that will be hereafter cited. The conclusion of the court that *all Garland did* was to come to Washington and sign the treaty, is a mere assumption and that not well grounded. That the delegates performed little, if any services in the negotiation of the treaty of 1855 and in the prosecution of the claims of the Choctaws, and that practically *all* services rendered that produced the results were rendered by attorneys, is largely the theory upon which the court below justified its diminution of the value of Garland's services from that provided in the contract and admitted by the nation time and again, as we shall show from the records of the Nation, some of them made at the time, *more than sixty years ago.*

One of the claims of the Choctaws against the United States—and the largest claim—was for the net proceeds arising from the sale of their lands lying east of the Mississippi River. This is known as the "net proceeds" claim and we refer to it as such. The treaty recognized the rightfulness of this claim, and to determine what was due thereon, the Senate passed a resolution directing that the claim be referred to the Secretary of the Interior to state an account and report back to the Senate what was due thereon.

The matter was in course of auditing until 1858, when upon the report of the Secretary of the Interior it was found by the Senate that there was due to the Choctaw Nation upon the "net proceeds" claim, the sum of $2,981,247.30.

Pending this period, when the account was being stated by the Secretary of the Interior, the following acts were passed by the Choctaw Council:

On November 4, 1857, a bill was passed appropriating $2000 each to Pitchlynn, Garland and Israel Folsom (and $2000 to the successor to Dixon W. Lewis, one of the original delegates who had died, his successor being Peter Folsom) as advances for their expenses to and at Washington. (Laws Choctaw Nation 1869, pp. 159-160.)

On the same day the council passed another act or resolution whereby the delegates of 1853 (then P. P. Pitchlynn, Samuel Garland, Israel Folsom and Peter Folsom, the successor of Lewis) were directed to proceed to Washington *as soon as practicable* and given full power to urge a speedy conclusion of all matters of unsettled business arising under the treaty. (Laws of the Choctaw Nation 1869, p. 162.)

On October 22, 1858, upon the report and recommendation of a special committee of the council, that "as it is very important that our delegates should proceed to Washington at as early a day as possible, to be there at the meeting of Congress to press the claims of the Nation, etc., that the sum of eleven thousand dollars be appropriated as an advance to the delegates, five thousand dollars of the appropriation being to pay McKinney for services in the arrearage case," the council passed an act making the appropriation as recommended as an advance to the delegates for their expenses to and at Washington. (Laws of the Choctaw Nation 1869, p. 180.)

On the 20th, October 1859, the council passed an act appropriating $2000 each to Pitchlynn, Garland, and Israel Folsom "to enable them to proceed to Washington to effect the appropriation necessary to complete the settlement as designed by the resolution of the Senate of the United States, passed 9th of March, 1859." (Laws Choctaw Nation 1869, p. 209.)

On October 20, 1859, a bill passed the council appropriating $4000 to pay Nancy Lewis, widow of Dixon W.

Lewis, the deceased delegate for his services. On the same day another act was passed appropriating $2000 for Nancy Lewis for the same purpose, and on October 31, 1860, the council passed another act appropriating $2000 to her for the same purpose. (Laws Choctaw Nation 1869, pp. 207, 209, 332.)

On the 25th October, 1859, the council passed an act among other things providing, "that the present delegates *now in Washington* be instructed and authorized to protest before the proper department in regard to running the Eastern Boundary Line between the Choctaw country and the state of Arkansas." (Laws Choctaw Nation 1869, pp. 226, 227.)

On the 27th October, 1860, the council passed an act appropriating $2000 each to Pitchlynn, Garland and Israel Folsom, to enable them to defray their expenses in attending to the Choctaw business in Washington. (This act was proven by certified copy filed, and admitted as evidence without objection.)

On October 27, 1860, the Choctaw Council passed the following act:

> "Sec. 1. Be it enacted, etc. That the Commissioner of Indian Affairs be and he is hereby authorized and requested to place in the hands of United States Indian Agent for the Choctaws and Chickasaws (who was D. H. Cooper), from the first money appropriated by Congress in payment of the debt due the Choctaw Nation under the Senate award made in compliance with the treaty stipulations contained in the treaty made between the Choctaw Nation and the United States June 22, 1855, the sum of one hundred and thirty-four thousand five hundred and twelve dollars and fifty-five cents, to be expended, or so much thereof as may be necessary, in the purchase, shipment and distribution of 65,000 bushels of corn among the Choctaw people, per capita, *provided,* said appropriation can be early enough to effect their relief, and *provided also,* that all existing national obligations to be discharged out of said appropriations

shall first be paid." (Laws Choctaw Nation 1869, pp. 319, 320.)

On November 6, 1861, in connection with this transaction, the Choctaw Council passed the following act:

> "Whereas, the sum of one hundred and thirty-four thousand five hundred and twelve dollars and fifty-five cents was paid over to Gen. D. H. Cooper, late agent for the Choctaws and Chickasaws, *by the Government of the United States*, out of funds arising from the net proceeds of the lands of the Choctaws, under the treaty of 1855, for the purchase of corn under the act of the General Council of the October session, 1860; and whereas, it appears that only a portion of said fund was expended for the purchase of corn and the balance remains unaccounted for by the said Douglas H. Cooper; Therefore,
>
> Sec. 1. Be it enacted, etc., that the principal Chief of this nation be authorized and is hereby required to take immediate steps for a full and fair settlement with the said Douglas H. Cooper in regard to said funds. That said Cooper be required to produce proper vouchers for the purchase of corn that was distributed among the Choctaws, and that he be allowed a credit for that only.
>
> Sec. 2. That D. H. Cooper be required to pay over all money in his hands, of said funds, after allowing him the credit above mentioned, and to turn over any certificates of deposit that he may have as a part of said funds, and that the Principal Chief be authorized to receive the same and turn it over to the treasurer." (Italics mine.) Approved November 6, 1861. (Laws Choctaw Nation 1869, pp. 359, 360.)

In the face of the admitted fact that this money had been turned over to Cooper by direction of an act of the Choctaw Council; in the face of and despite the fact as shown by the receipt of the Choctaw National Treasurer that $112,000 had been paid by a U. S. Treasury draft which was turned over by the delegates to said treasurer

of the nation; regardless of the fact shown in the settlement of 1861 that the balance of the $250,000 appropriated by Congress, $3,487.45 was retained by the delegates to defray the expenses to and at Washington (where they were by direction of the council); and disregarding appellants' request for the court to amend its findings in accordance with these established facts upon the motion for a new trial and for amended findings, the court found (and permitted the finding to stand) as follows:

> "On March 2, 1861, 12 Stat. 238. 239, Congress appropriated $500,000 on account of the Choctaw claim under Articles 11 and 12 of the treaty of June 22, 1855, *supra,* of which $250,000 was to be paid in money and $250,000 in government bonds, upon the requisition of the proper authorities of the Choctaw Nation. This $250,000 that was to be paid in cash *was collected* by Peter P. Pitchlynn, 'the business manager of the delegation, *who turned over $135,000 to United States Indian Agent D. H. Cooper* to buy corn for the Choctaw Nation. He paid $40,000 to Albert Pike for services in the 'net proceeds claim,' and expended part in the purchase of corn which spoiled, and the balance was not accounted for satisfactorily. *The said Pitchlynn retained $115,000,* and the evidence does not show to the satisfaction of the court that any part of this amount reached the treasury of the Choctaw Nation" * * * (Finding IV, p. 4 Record. Italics mine.)

From these records of the Choctaw Nation as above and those hereafter exhibited, the *fact* is shown that Pitchlynn *did not* "turn over" $135,000 to Cooper, but that $134,512.55 was paid to him through the Commissioner of Indian Affairs. That the $250,000 *was not* collected by Pitchlynn in cash. That he *did not* retain $115,000 of the $250,000, but that of this sum the delegates were given a U. S. Treasury warrant for $112,000, which they turned over to the National Treasurer as evidenced by

his receipt. That the balance, after deducting what Cooper received, and deducting the $112,000 U. S. Treasury warrant, $3,487.45 was retained by the delegates towards their expenses. We submit the foregoing without comment.

January, 1861, the council passed an act appropriating $1500 as an advance and loan to Peter Folsom "for the purpose of defraying his expenses to Washington City to attend to his duties there as National Delegate." (Laws of the Choctaw Nation 1869, pp. 351, 352.)

It may here be stated that all these advances of money to the delegates, as well as the sums paid to the widow of Dixon W. Lewis, were charged to the delegates as against fees allowed the delegates in a full and complete settlement made by the delegates with the nation in 1861, as will be presently shown.

As the court seems to justify its reduction of Garland's compensation upon the theory that practically none, or but little, of the services that resulted in the treaty, the adjustment of the "net proceeds" claim through the Interior Department and the U. S. Senate, and the ultimate recovery on behalf of the Choctaw Nation of more than four million dollars, were rendered by the delegates, but that practically all of such services were rendered by the attorneys (and therefore there should be a diminution of Garland's compensation), the foregoing, as well as what follows in the settlements and acts of 1861, 1867, 1873 and 1888, we deem of the utmost importance as showing *what the nation* at the time declared and admitted to be the facts regarding these transactions.

In June, 1861, the council passed a resolution appointing a committee for the purpose of calling on the delegation for a report of their acts as such delegation and for an accounting. (Laws Choctaw Nation 1869, p. 354.)

Thereupon, on November 1, 1861, the delegates made a full report of the status of the Choctaw business that had been under their supervision and subject of their

activities, and of all money collected under the treaty of 1855. (Appendix No. 2, pp. 58-77.)

It appeared from this report that there had been collected, as a result of the treaty of 1855, the sum of $842,258. Also that there had been appropriated by Congress on account of the Senate award in the "net proceeds" claim, the sum of $500,000. Of this sum $250,000 was to be represented by bonds to be delivered to the nation (which were never delivered but included in the final judgment rendered in 1886), and $250,000 which was to be paid in cash. This latter sum was reported by the delegates, and with the sum first above named, made a total of collections under the

treaty of 1855 . . . . . $1,092,258

The sum recovered on the judgment of 1886 was 3,072,311

Total recoveries under the 1855 treaty $4,170,569

There were three items of collections upon which the delegates made claim for fees, amounting to $148,451.00, which were allowed under the 20 per cent contract, and two items upon which no compensation was claimed. Against the fees allowed the delegates they were charged, as stated, with all money advanced them for expenses, the sums paid to the widow of Dixon W. Lewis, and other obligations for which the delegation was liable. Upon this accounting there was left an indebtedness from the nation to the delegates of $84,394.23. The council passed an act reciting these facts, confirming the report of the committee, approving the account of the delegates as made, and *admitting the indebtedness to the delegates as stated.*

No other settlement was made between the delegates and the nation until January, 1888, when a settlement or account was made by LeFlore representing the Choctaw Nation and Henry E. McKee, attorney for the nation. This statement of account was made after the final judgment in the "net proceeds" case had been rendered.

The delegates Pitchlynn, Samuel Garland and the two Folsoms were then dead.

Upon this settlement of 1888, the Choctaw Council passed an act recognizing the balance due the delegates on the settlement of 1861 as $84,394.23, and after charging them with the money that had been paid to them since that date, found the balance to be due as $23,-395.39. (Finding V, p. 5 Record.)

This settlement of 1861, with the act of the council approving the same, was before the court in certified form, not a certification of recent date, but a certification of the National Secretary bearing date of November 7, 1861. It was admitted without objection and reference is made to it in the court's findings.

As it involves a *certified act* of the Choctaw Council, request was made of the court to incorporate it in its findings, but this request was refused. In the motion to remand it will be requested that the act be transmitted to this court along with other acts sent up. In the form submitted, the account, report of the committee, and the act, appear as parts of one document. It is set out, No. 2 Appendix hereto, pp. 61-63.

The statement of account made by LeFlore and McKee in January, 1888, upon which the act of February, 1888 was passed fixing and admitting the balance due on settlement of 1861, is also referred to in Finding V, not in terms, but in substance. The court below was requested to send up this settlement along with the partial settlement it sent up in the Pitchlynn case (see appendix that case) or to find the fact shown by the report and by whom the report was made, but it declined so to do. *All this was a part of defendants' evidence in the court below.*

We request, in the motion to remand, that this report be sent up with the findings, or in the alternative, that a finding be made of the facts shown by the report. It is set out No. 3 Appendix, pp. 69-75.

These being the only statements of account and settlements made between the delegates and the nation, and both having the approval of the council, and both being the basis of these acts, they are, we submit, of vital importance in determining crucial facts in the case, but more important as determining the legal rights of appellants. As having any probative force, or determining any legal rights of appellants, they are utterly ignored by the court below. (Op., p. 21 Rec.)

As illumining certain features of the case that are left confused by the court's findings, this report of 1861 shows to that date there had been received by the Choctaw Nation the following sums. (The fees allowed to the delegates are set out opposite the sums named):

For relinquished lands	$400,000	To delegates	$80,000
For leased lands	200,000	No fee.	
For Chickasaw jurisdiction	150,000	No fee.	
For back annuities	92,258	To delegates	18,451
On account of "net proceeds"	250,000	" "	50,000
	$1,092,258		$148,451

The effect of the court's decision, as we will hereafter show, is to take from the delegates these fees allowed by the nation. These transactions were wholly within the power of the Choctaw Nation, involving matters between the nation and its citizens, over which the nation had full control and jurisdiction. Their laws involving the regulations of property, contracts, etc., have always been respected by the courts, state and federal, when drawn into question.

After this settlement of 1861, and until the deaths of the delegates, there was left as uncompleted business under the delegates' employment only, the prosecution of the "net proceeds" claim and securing delivery of the $250,000 in bonds.

The court below (Finding IV, p. 4 Rec.), referring to the collection of the $250,000 appropriated by Congress upon the Senate award, intimates that it was paid to Pitchlynn in cash; that there was no authority shown for the paying over to Cooper, Indian Agent, of $140,000 of this sum; and that $115,000 was retained by Pitchlynn and that the evidence does not show to the satisfaction of the court that it was ever satisfactorily accounted for.

The account and proceedings had by the council November 1, 1861, most perfectly shows all these facts. It could have been *only* because of the court's refusal to give credit to these documents that it was left in such a state of mental uncertainty.

It is shown that the $140,000 was paid over to Cooper by the Commissioner of Indian Affairs *under directions of an act of the council of October, 1860* (*Supra*, pp. 7, 8.) The $250,000 *was not* paid over to Pitchlynn in cash, but $112,000 of this sum was represented by a U. S. Treasury draft, which draft was turned over by the delegates to the treasurer of the Choctaw Nation and his receipt taken therefor. (Motion to remand, p. 11.) The balance, $3,487.45, was retained by the delegates, then in Washington, as expense money and duly accounted for. The account shows the settlement on this item to be as follows:

Paid to Cooper *under act of the council of October, 1860*	$134,512.55
Turned over to the National Treasurer *and his receipt taken* therefor, U. S. Treasury warrant	112,000.00
Retained by delegates for expenses	3,487.45
Total sum accounted for	$250,000.00

This account was approved by the Choctaw National Council now more than sixty-five years ago, and it does seem, in its endeavor to ascertain what was done at that time, the court should have accepted this report and act

of the council, and been satisfied with it. The approval of the settlement by act of the council makes the account a part of the act, and we submit that at this late date the Choctaw Nation is estopped by its own acts to deny the settlement as made. Being a matter wholly within the powers of the nation we submit that its legislative enactment thereon is conclusive and was not subject of review by the court below for the purpose of reaching different conclusions from those determined by the act.

While the court below found, in terms, the settlement of 1888 (Finding V, p. 5 Rec.), it refused to give to it the probative force or legal effect to which it is entitled. There was, as stated, an act of the council upon this settlement whereby it was approved. This act fixed and determined the status of the delegates of 1853 as creditors of the nation on a balance due on the settlement of 1861, in the sum of $23,395.39, and for 20 per cent on the "net proceeds" judgment. (Finding X, p. 11 Rec.) We submit that all these were matters wholly within the exclusive powers of the nation, and that its action has the force of law and was binding upon the court below.

The disposition of the $112,000 warrant is fully shown in the report and settlement of 1861. The amount received by the delegates from the proceeds of this warrant subsequent to the settlement of 1861 is shown in the settlement of 1888 (*Infra*, p. 17). By reason of the disturbed condition on account of the pending hostilities between the North and South, the nation was unable to collect the U. S. Treasury warrant for $112,000. The services of two missionaries, Stark and Hotchkiss, were engaged to go through the lines, secure payment of the warrant and bring the proceeds to the nation. This arrangement was presumably made by the National Treasurer, as the warrant had been turned over to him by the delegates. They (Stark and Hotchkiss) were to receive 20 per cent of the collection.

The court finds that at least $74,927.45 of the proceeds of this warrant was appropriated by the delegation to its own use. Garland is charged with one-fourth of this sum. (Record, p. 22.)

If the settlement of 1888 by LeFlore and McKee, and the act of the council thereon, be given due faith and credit, the amount received by the delegation from this $112,000 warrant was $30,275.84, *and this was charged against the balance due on the settlement of 1861* and contributed in the reduction of that balance from $84,-394.23 to $23,395.39.

This settlement having been merely stated (Finding V, p. 5 Rec.), we trust there is no impropriety in setting it out. It is as follows:

The delegates are credited with:

For fees of 20 per cent on $2,858,798.62, the amount of the judgment of the Court of Claims rendered December 15, 1886, in favor of the Choctaw Nation, as provided in their contract dated November 21, 1855, the sum of.....	$571,759.39
And in addition thereto whatever may be appropriated by the United States for interest on that amount.	
For balance still due and unpaid to the delegation under the settlement of November 1, 1861, as shown by a statement hereto attached marked "A".....	30,395.39
	$602,155.11

And interest as above on $571,759.72.

The above and foregoing statement is true and correct, as ascertained from all data now in possession of the delegation and attorneys.

CAMPBELL LEFLORE,
Choctaw Delegate.
H. E. MCKEE,
Att'y for Choctaw Nation.

Washington, D. C., January 16, 1888.

STATEMENT "A."

By act of the General Council of November 1, 1861, making a settlement with the delegation and its attorneys up to that time, it is declared that there is due to the delegation and the attorneys the sum of $84,394.23; and it is further shown *by the* papers hereto attached that of this sum $14,140 is due to John T. Cochran, and the sum of $70,254.23 is due to the delegation.

From this balance of.....	$70,254.23
Must be deducted the following amounts *subsequently paid to them on account of that debt, and which were not charged against them in that settlement, viz.:*	
In 1861, out of money brought to the nation by Stark and Hotchkiss.....	15,071.37
In 1862, out of money brought by same parties	15,204.47
In 1866, paid by Allen Wright, treasurer to P. P. Pitchlynn.....	9,583.00
Balance still due delegates.....	$30,395.39

(Appendix No. 3, pp. 75. Italics mine.)

This settlement was made up by LeFlore and McKee, representing the nation, as shown on January 16, 1888. On February 25, 1888, the Choctaw Council passed the act appropriating $23,395.39 as the balance due by the nation to the delegates on the settlement of 1861. This further reduced the sum found due by LeFlore and McKee by $7,000. There is nothing in the record to show what the charge is that accounts for this reduction, but as it represents the act of the nation through its council, appellants did not question its rightfulness.

The vice in the method employed by the court to reach its conclusions it did, lies largely in its refusal to give any probative force whatever to these settlements, or legal effect to the acts of the council. This resulted in the court's taking away from appellants fees that had been *earned, and allowed* by the nation. The court finds that in all Garland has received $85,876.15 and that

this sum is a fair measure of compensation for the services rendered by him in the "net proceeds" case. Possibly if it had been found that he received $65,000 or $95,000 either of these sums would have served equally as well to measure the compensation for his services.

The amount charged by the court against this $85,-876.15 (as part of the $250,000 appropriated in 1861 on account of the net proceeds case) was also *charged by LeFlore and McKee in 1888 against what was due him and his co-delegates in 1861.* This balance due on that settlement represented a balance due on *earned and allowed fees.* Likewise the charge against the $85,876.15 of the sum of $11,000, advanced to Garland from 1857 to 1860 for his expenses *was charged to him in the settlement of 1861.*

Thus Garland is charged twice with the same sums, first by the nation against the sum *it* determined (and allowed) as due Garland, and then by the court against the sum *it* conceived to be due Garland. The vice of such an accounting is too palpable for argument.

The intervention of the Civil War interrupted all relations between the Choctaw Nation and the United States. The Choctaws allied themselves with the South and entered into treaty relations with the Southern Confederacy. In 1866 a delegation or commission was created by act of the council and authorized to negotiate a treaty with the United States. None of the delegates of 1853 were on the commission. A treaty was negotiated and the Choctaws restored to their rights under the treaty of 1855.

The court seems impressed with the idea that this service by the delegates of 1866 in securing the treaty of that year should militate against the claim of the delegates of 1853 on account of their services in the prosecution of certain claims (all of which were then concluded except the payment by Congress of the Senate award and the

delivery of the bonds), and justifies a reduction in Garland's compensation. Evidently the Choctaw Nation did not so view the matter, as will presently be shown in the act of 1867, and later on in the acts of 1873 and 1888. The delegates of 1866 were paid their per diem and expenses, and what was done by them is wholly beside any question to be here decided.

The commission of 1866 *did* become involved in a scandal of such moment that it was subject of a Congressional investigation. Suffice it here to say that the delegates of that year (except Jones), along with LeFlore and others, were most roundly denounced for their acts by the Congressional committee, while Pitchlynn and his co-delegates of 1853 were commended for their fidelity to the Nation. More extended reference will be made to this investigation and report in the brief in the Pitchlynn case.

On November 18, 1867, the Choctaw Council passed an act wherein among other things, it was stated, "Whereas, Col. P. P. Pitchlynn, Israel Folsom, Samuel Garland and Peter Folsom, were duly appointed delegates ets. * * * And, whereas said delegates *did* effect a basis for the payment of said claims mentioned in 11th and 12th articles of the treaty of June 22, 1855, etc * * * and thereupon the Senate of the United States * * * * did agree that the Choctaws be allowed the proceeds of such lands as have been sold etc. * * * Sec. 1. Be it resolved by the General Council etc. That the delegates, composed of P. P. Pitchlynn, Israel Folsom, Samuel Garland and Peter Folsom, are hereby notified that inasmuch as they *have nearly consummated* the "net proceeds question," they shall proceed without delay to Washington City for the express purpose of bringing the subject matter of these resolutions to the notice of Congress, and to respectfully ask an early appropriation etc. * * * (Laws of the Choctaw Nation 1869, pp. 470, 472.)

At every session of Congress from 1867 to 1881 (when the jurisdictional act was passed authorizing the Choctaw Nation to bring suit in the Court of Claims), with two or three exceptions, bills were introduced in Congress seeking to secure appropriation upon the Senate award and the delivery of the bonds. (Finding VIII, p. 9 Rec.) The court below attributes these activities to the attorneys, although Pitchlynn was then, and had been from 1866, the resident delegate in Washington, under written authority from his co-delegates to represent them in their absence. *The attorneys were employed by the delegates and* were operating under a contract promising much larger remuneration, in the event of final success, than that expected by the delegates under their contract, and we submit that the question of services rendered by the attorneys, are wholly beside any question here to be decided. (*Infra*, p. 36.)

On October 30, 1873, at a time when an appropriation was expected to be made by Congress to pay the "net proceeds" claim, the Choctaw Council passed an act directing the manner in which the sum due the delegates and attorneys should be made by the National treasurer. (Finding VIII, p. 9 Rec.)

This act has a most important bearing on the questions involved in this case. We might say it should have a most important influence in its decision. It was largely upon this act and that of 1867 that the former decision of this case was reversed. (*Supra*, p. 1.) This court looked to these acts to determine the purposes of the Nation and gave to them the force and legal effect to which they were entitled. The difficulty we now have is the refusal of the court below to give to any of the acts of the Choctaw Council any probative value or legal effect whatever.

In the first place this act recognized that there was a contract with the delegates whereby they should receive 10 per cent upon the expected payment of the

Senate award. In the second place it recognized that there was a contract with the attorneys whereby they should receive 30 per cent upon such sum as might be paid upon the award. *It thus recognized its separate obligation to the delegates and the attorneys,* for services rendered by each up to that date.

At the time this act was passed both Israel Folsom and Garland were dead. The effect of the act was to direct the treasurer to pay to those delegates living the amount due them and to the representatives of those delegates who were dead there should be paid the amount due their ancestors. There is no suggestion that there should be a diminution of the compensation of any of the delegates because the attorneys had done more or less work than the delegates, or because one delegate may have contributed more to the accomplishment of what had then been done than the other.

Had the appropriation then been paid, can it for a moment be thought that the delegates then living, or the heirs of those then dead, would have been settled with upon the basis that is now found by the court for such settlement?

Upon passage of the jurisdictional act suit was brought in the Court of Claims and thereafter, and until final judgment, the case was in the hands of the attorneys. The course of this litigation is shown in the court's findings. (Finding IX, p. 10 Rec.) The final payment of this judgment shows that the total recovered was $3,078,370.23.

Under the act of 1873, (which was the law in force in 1888,) the proceeds of the judgment would have gone to the Choctaw National Treasury. The 30 per cent due the attorneys—as well as the 20 per cent due the delegates—would have been paid over to the delegates and they would have settled with the attorneys.

As much as we hesitate to further lengthen the statement of the case, we feel that its full history cannot be

disclosed without a somewhat extended reference to what followed the rendition of judgment. These facts are fairly well stated in the findings.

With a well defined purpose to prevent the payment of the sums due the attorneys and delegates under their contracts into the Choctaw National Treasury, McKee, the principal attorney and LeFlore, along with other conspirators, sought to have the act of 1873 repealed and such legislation enacted as would serve their purposes. In due course, the judgment rendered December 16, 1886, was reported to Congress for appropriation. This was a short session of Congress.

In order to hold up the appropriation until the repeal of the act of 1873 could be accomplished and the desired legislation had, a resolution was introduced in the Senate, (that such resolution was inspired by LeFlore and McKee cannot be questioned) to inquire into and report what claims there were for professional services in the "net proceeds" case. Testimony was taken, and this testimony, without report by the committee, was referred to the Committee on Appropriations. This committee rejected the appropriation and thus died the bill for that session. (Cong. Rec. Vol. 18, pt. 3, p. 2374.)

The proceedings before the sub-committee can be found S. Rep. 1978, 49 Cong. 2d Sess. Cong'l Series No. 2458. We submit that this report is cognizable by this court, as it was in evidence and before the court below.

Returning to the conduct of LeFlore and McKee:

Having prevented the appropriation of 1887 to pay tne net proceeds judgment by killing the bill, they then sought to secure the repeal of the act of 1873.

They proceeded to secure a called session of the Choctaw Council. In a letter from LeFlore, written from Washington, to Thompson McKinney, Principal Chief, dated January 24, 1888 (Appendix No. 4, p. 76), he stated that the appropriation to pay the judgment had been left out of the Deficiency Bill, *and that it would not*

be in any bill unless satisfactory arrangements were made in relation to the payment of attorneys' fees.

In the face of this letter can there be any question as to *who* was holding up the appropriation?

In pursuance of their scheme, and through bribery and corruption very well shown by the record and found by the court, they secured to be called a special session of the Choctaw Council in February 1888.

They first sought the repeal of the act of 1873. This repealing act took away from the treasurer of the nation all control over the proceeds of the judgment as to the delegates' and attorneys' compensation. All former acts (these were those of 1867, 1873, and November 1887) directing that the money should be paid into the treasury of the nation, were repealed, and to make assurance doubly sure it was provided, "that all acts in conflict with this act are hereby repealed, *and especially the act passed and approved October, A. D 1873,* defining the duties of the national treasurer in connection with the net proceeds claim." (Appendix No. 5, p. 77.)

Up to that time, the purpose of LeFlore to secure possession of the sum due the delegates—or their heirs—had not been disclosed. This right to receive this sum, $638 - 944.36 *without bond or the duty of accounting,* was given him, in a hidden way, in a bill that provided that the proceeds of the judgment should "be paid over from time to time, and in such sums and at such places as may be required, directly to the national treasury of the Choctaw Nation, *or to such agent or other person as shall be named in the requisition.* (Appendix No. 5, p. 77.)

That it was then known that the requisition upon the U. S. Treasury for the delegates' fund was to be made in favor of LeFlore and that the requisition for the attorneys fees would be made to McKee and other attorneys, is shown by the acts of the council which followed.

This act was passed on February 22, 1888. The acts designated LeFlore and McCurtain as the *"agents or other persons"* to receive the amount due the delegates of 1853, was passed on February 25, 1888, and on the same day the act providing for requisition for the attorneys' fee was passed. (Appendix, *Ibid.*)

Several of the attorneys associated with McKee (evidently unwilling that their fees should fall into his hands) had requisitions made upon the U. S. Treasury Department, payable directly to them. These requisitions amounted to $129,939.93. The balance of the attorneys' fees, $783,763.82, was paid directly to McKee. *The total amount paid to McKee and LeFlore was $1,422,708.28!*

Thereupon LeFlore entered into a veritable saturnalia of fraudulent dispositions of the delegates' funds. He redeemed his promises made to those in and about the council of February 1888, the consideration unquestionably being bribery in securing the called session of the council and for securing the *desired* legislation, (this fact being very well found by the court) by paying to them out of the delegates' fund, $85,020.00. He paid out under an alleged memorandum of Pitchlynn, $107,626.50. After making other payments which he charged were delegates' liabilities (which the McKee contract shows should have been paid out of his fee) there remained a balance of $145,399.15. *This sum he paid over to McKee "as delegates' part of general expenses"* regardless of McKee's obligation to pay these expenses. Thus it appears that McKee received $783,763.82 plus $145,399.15, a total of $929,162.97, *and escaped payment of any of the expenses of the litigation,* all expenses, of every character whatever, including all sorts of bribery and corruption, *ad nauseum, being charged by LeFlore to the delegates' fund!* No charge is made, nor can such charge be truthfully made, that Pitchlynn or Garland, or the heirs of either, were connected in any way whatever

with these corrupt acts had and done under the acts of the council of 1888. In face of these facts can any one question *who* was interested to secure the called session of February 1888 and the legislation then enacted?

The court holds that there was no authority for the payments made by LeFlore out of the delegates' fund as follows: Under the Tushkahoma promises, (these involve the council of 1888) $85,020.00. Under the so-called Pitchlynn memorandum $107,626.50. To McKee as delegates' part of the general expenses, $145,399.15. We have here an admitted misappropriation by the disbursing agents of the Choctaw Nation (for whose acts this court has held that the nation was liable) of $338,045.65 in the administration of the fund expressly created by the national council for the heirs of the delegates! And upon this, *the court's own showing,* there is no relief! The error of the court's decision upon these facts *found by the court* is apparent.

The court below sets out in the findings *a part* of the report and settlement made by LeFlore in 1889. (Record Pitchlynn case, pp. 48-49.) The items of disbursements made by LeFlore at Tushkahoma in 1888 (which payments were very well held by the court to have been in the nature of bribes to members of the council and lobbyists about the council) is omitted from the statement made up by the court. *Ibid.* Likewise the alleged payments made under the alleged Pitchlynn memorandum, and held by the court to have been improperly made, are not set out in the statement as made by the court and referred to *Ibid.* Why these items were not set out—we do not know. If this court is to have before it those items that the court below deemed as proper charges against the delegates (which we contend were properly chargeable to the attorneys) then why not have a showing made of the completeness of the perfidy of LeFlore?

That this court may have this report in full, it is set out in the Appendix No. 3, pp. 69, 75. Upon motion for

new trial and for additional and amended findings, the court below was requested to set out the report in full, which request was refused. We will request on motion to remand that it be sent up and therefore feel that there is no impropriety in setting out the report and alleged settlement in full in the appendix.

The result of the legislation secured by LeFlore, McKee, and their fellow conspirators, as to benefits secured by LeFlore and McKee, was to have paid over to LeFlore *without bond or requirement of accounting* the amount due the delegates $638,944.36. That this fund was shamelessly dissipated by him is very well found by the court.

The prime beneficiary of the acts of the 1888 council was McKee. As "a part of the delegates' general expenses" LeFlore wrongfully paid him $145,399.15. He was paid a fee of $783,763.82. It was very well shown that he absconded to Canada with the money, leaving a number of obligations to other attorneys unpaid and through collusion with LeFlore, escaped payment of certain expenses that he was obligated to pay under his contract and which were paid by LeFlore from the delegates' fund.

In the face of these admitted and nauseating facts, we respectfully submit that it is abhorrent to every sense of justice to deny appellants the relief they ask. Certainly they should be awarded judgment for *their money* appropriated *for them* by the nation, and admittedly *misappropriated* by the disbursing agents of the nation. On the plainest principle of common justice, restitution should be made to appellants for such misappropriation of their funds as is admitted to have been made by the agents of the nation, for whose acts this court has held the nation to be liable.

ASSIGNMENT OF ERRORS.

The following are assigned as the errors committed by the court below:

1. In its conclusion of law that the petition be dismissed.

2. In finding that full satisfaction has been made of appellant's claim.

3. In refusing to give effect to the laws and resolutions enacted by the National Council of the Choctaw Nation respecting the matters in controversy.

4. In refusing to give effect to certain settlements made between the appellants' ancestor Samuel Garland and his co-delegates and the Choctaw Nation.

5. In going back of the settlement between the delegates and the Choctaw Nation of 1861, and bringing in its—the court's—accounting as fees allowed and money paid in the "net proceeds" case, items of debit that had been allowed in that settlement as credits against fees in cases other than the "net proceeds" case. This action of the court took from appellants, fees that had been allowed by the nation in other cases, and applied them as money received on account of the "net proceeds" case.

6. In disregarding the settlement made in 1888 between the agent and attorney of the Choctaw Nation and the heirs of the delegates of 1853 (which settlement was approved by act of the council), and charging to the delegates as money received on account of the delegates' fee in the "net proceeds" case, money that had been charged against the delegates on the balance that was due them under the settlement of 1861. This action of the court effected to charge the delegates twice upon the same items, in disregard of former settlements made between the delegates and the nation.

7. In charging against the delegates—appellants in particular—money paid out by LeFlore as charges against the delegates' fund, for which the delegates were not liable, such payment being properly chargeable to the fees received by the attorneys.

8. In bringing into its—the court's—accounting, as money received by the delegates, on account of their fee in the "net proceeds" claim, items of debit in the account of 1861, that represented money advanced to the delegates from 1857 to 1861 for their expenses, and used by them generally in the prosecution of the several claims of the Choctaw Nation against the United States.

9. In not adjudicating appellants' claim upon the basis of the settlement as made by appellee in the settlement of 1888; and in not allowing appellants the amount legislated as due them by the appropriation act of that year.

10. In holding that $18,731.86 (p. 22 Rec.), one-fourth of $74,927.45 (Finding IV. p. 4 Rec.) is chargeable against Garland's compensation in the "net proceeds" case. From the proceeds of the $112,000 U. S. Treasury draft, which was collected through the treasurer of the Choctaw Nation, there was chargeable to the delegates the sum of $30,275.84, paid to them subsequent to the settlement of 1861. This sum was charged to them against the balance, $84,394.23, that was due and allowed to them on the settlement of 1861 in the settlement of 1888. (No. 3 Appendix, p. 75.)

In holding that $11,000 is chargeable against Garland's compensation in the "net proceeds" case, as this sum was charged to the delegates against the compensation allowed them in the settlement of 1861. (No. 2 Appendix, p. 68.)

In holding that Garland is chargeable with one-fourth of the $25,000 referred to (see p. 22 Record), as this was an obligation of the nation and not of the delegates. (Motion to remand, pp. 4-6.)

BRIEF.

Quantum Meruit.

This suit was filed in the Court of Claims on September 3, 1908, under Section 5 of the act of May 29, 1908, 35 Stat. 445, which provides:

> "That the Court of Claims is hereby authorized and directed to hear and adjudicate the claim against the Choctaw Nation of Samuel Garland, deceased, and to render judgment thereon in such amounts, if any, as may appear equitably due, said judgment, if any, in favor of the heirs of Garland shall be paid out of any funds in the Treasury of the United States belonging to the Choctaw Nation, said judgment to be rendered upon the principle of *quantum meruit* for services rendered and expenses incurred. Notice of said suit shall be served on the Governor of the Choctaw Nation, and the Attorney General of the United States shall appear and defend in said suit on behalf of said nation."

When Congress passed the jurisdictional act, it knew that the Court of Claims was not a court where technical pleading was to be indulged. That on the contrary it was a court to determine cases on the merits. This court, in the opinion by Mr. Justice McKenna, 256 U. S. 439, reversed the Court of Claims and remanded the case to that court and expressly stated that the language in the jurisdictional act was not to be given too technical a meaning. It has always been, however, the rule that upon a suit on *quantum meruit* the court, when the work has been fully performed, may receive as evidence under *quantum meruit* the acknowledgment by the debtor of the amount due, as being an admission, between the parties, of the reasonable value of the material, work, labor or services.

The principle is that "when the special contract has been fully performed and nothing remains to be done but the payment of the money due thereon, this constitutes a debt which the plaintiff may declare upon and prove under the common counts." *C. & O. R. R. Co.* v. *Knapp,* 9 Peters U. S. 541; *Brady* v. *Brooklyn,* 1 Barbour (N. Y.) 584; *Ezell* v. *King,* 93 Ala. 470.

When Congress referred the claim of Garland to the Court of Claims for determination on the principle of *quantum meruit,* it, therefore, was competent for the claimant, as evidence of his services and their value, and as to money expended by him, to introduce in evidence his contract, the recognition by the Choctaw Nation through a long series of years of the contract, and the performance of services called for by the contract, and finally, after full performance and receipt by the nation of the benefits it received, the acts of the Choctaw Nation recognizing the amount due the delegation. And further, evidence from the records and acts of the Choctaw Nation (the contract having been at this time fully performed), showing that in acknowledgment of the rendition of such services the full sum due was appropriated for the delegates, paid into the hands of the agents of the Choctaw Nation, and by them largely appropriated to their own use or misapplied in the discharge of alleged obligations for which the court has held that they were not legally liable, is none the less admissible as evidence in a determination of the case on the principle of *quantum meruit.*

The Choctaw Nation stated the account of the delegates in 1888, upon which it acknowledged and determined what was due the delegation under their contract for services performed and money expended, made appropriation for the payment of the same, delegated to LeFlore and McCurtain the duty of making such payment to the heirs of the delegates, who paid to the such heirs only a part of what the nation acknowledged as

due them, and applied the balance to their own use and benefit or in the discharge of obligations for which the court holds the delegates were not legally liable.

This was clearly admissible evidence under *quantum meruit* and there being no *evidence* countervailing it, upon these facts admitted and acknowledged by the nation to be true, the case as thus proven was clearly one calling for judgment in the sum admitted by the Choctaw Nation to be due the delegates of 1853.

We may refer to a report of a committee of Congress accompanying a bill to ascertain the purpose of Congress in passing the bill.

Smith v. *U. S.*, 19 C. Clms. 690.

The report of the committee accompanying the Garland bill is as follows:

REPORT.

To accompany H. R. 2245.

The Committee on Indian Affairs, having under consideration the bill (H. R. 2245) authorizing the Court of Claims to hear and adjudicate the claim against the Choctaw Nation of Samuel Garland, deceased, respectfully reports the same to the House.

The bill does not carry any appropriation, but simply authorizes the Court of Claims to hear and adjudicate the claim.

The Choctaw Nation some years ago sent four delegates to Washington to prosecute a claim known as the "net proceeds claim." These delegates prosecuted the claim before Congress and the Departments until it finally settled in 1889.

Settlement has been made by the Choctaw Nation with two of them, but not fully with Peter Pitchlynn and Samuel Garland. Congress some time ago authorized the Court of Claims to hear and adjudicate the claim of Peter Pitchlyn for his services in this matter, the claim of Samuel Garland, now deceased, is practically the same as that of Pitchlynn, and the purpose of the present bill is to confer authority on the Court of Claims to adjudicate this claim in the same way as that of Pitchlynn.

As indicated by this report, the fact is that the Pitchlynn bill was first introduced and passed, and subsequently, in identical form of the Pitchlynn bill, the Garland bill was introduced and passed. In Pitchlynn's claim there were items other than the claim for balance due on the appropriation by the Choctaw Council on the judgment in the "net proceeds" claim.

One of the items of claim on the part of Pitchlynn was for services as general delegate of the nation, representing the nation generally in all matters before Congress and the Department. There was no contract between Pitchlynn and the nation regarding his compensation for these services, and for them he sued on implied contract, and as to this item, it could be adjudicated on no other principle than *quantum meruit*. It is doubtful if the committee who reported the bill, or the Congress when it passed the bill, gave any thought or consideration to the form in which the bill was drawn or its purpose other than give to the Garland heirs a forum in which the claim might be adjudicated. The report of the committee clearly shows that all there was before it was a claim of Garland for a balance he alleged that was due him by reason of the fact that he had not been fully settled with by the disbursing agents of the nation.

In the light of this report, we do not take the jurisdictional act as mandatory to the Court of Claims to adjudicate the case, technically, on the theory of *quantum meruit*. We do not understand that this court, reviewing a former decision of the Court of Claims, took this view of the jurisdictional act.

One of the grounds of the dismissal of the petition in the case then under review by this court (*Garland* v. *Choctaw Nation*, 54 C. Cls., p. 68) was that the jurisdictional act directed judgment, if any, on the principle of *quantum meruit* for services rendered and expenses incurred, and that the suit was not asserted or prosecuted on that basis.

Referring to this holding of the Court of Claims, and the explicit contention there made—and sustained—that the jurisdictional act authorized a judgment on a *quantum meruit* and that therefore (quoting from the language used by the court below, *Ibid*), "no judgment can be rendered on a petition which seeks recovery merely on the ground of a contract," this court said:

> "The contention under the facts disclosed in the petition is technical. The petition showed services rendered and, if the petition be true, valuable services and for them there should have been a recovery if the nation was liable, and we think it was." (*Garland* v. *Choctaw Nation*, 256 U. S., p. 445.)

That the Pitchlynn and Garland cases were sent to the Court of Claims with direction from Congress to adjudicate the rights of the claimants on the principle of *quantum meruit* because of distrust on the part of Congress of Garland and Pitchlynn, because Congress had no faith in the integrity of the acts of the Choctaw Council, as is suggested by the court below, is a mere assumption, without support at any place in the record. We submit that the acts of a legislative body are not impeachable in the courts. At the time the acts of 1888 were passed, under which the funds of the delegates were despoiled by LeFlore, McKee and others, the delegates had all long since been dead. Garland had been dead sixteen years. There is nothing wrong with the act of 1888, appropriating what the nation found to be due the delegates of 1853. Had LeFlore honestly executed his trust, the delegate representatives would have been paid, *according to the court's findings*, the $338,045.65 found to have been illegally—*corruptly*—misappropriated, would have been added to the sums actually paid by LeFlore to the heirs of the four delegates, Pitchlynn, Garland, and the two Folsoms. One-fourth of this sum, $338,045.65, viz.: $84,511.41, *leaving*

all the charges the court makes against Garland to stand, is the minimum amount (under any theory of the case) for which he should have judgment.

That the court below was not held strictly and in a technical sense to the jurisdictional act for the basis of its determination of the case, and that it might be determined upon the theory of the petition—which was a declaration for money had and received on contract and that there had been a misappropriation of the same by the nation's agents—as was very well decided by this court—is supported by the decision of this court in the case of *Clark* v. *The U. S.,* 95 U. S., p. 543. It was there held:

> "The forms of pleading in the Court of Claims are not of so strict a character as to preclude a claimant from recovering *what is justly* due him upon the facts stated in his petition, although due in a different aspect from that in which his demand is conceived." (Italics mine.)

In *Behan* v. *The U. S.,* 110 U. S., p. 347, this court said:

> "In a proceeding like the present, in which the claimant sets forth, by way of petition, a plain statement of the facts without technical formality, and prays for relief in a general manner, or in an alternative or cumulative form, the court ought not to hold the claimant to strict technical rules of pleading, but should give to his statement a liberal interpretation, and afford him such relief as he may show himself substantially entitled to if within a fair scope of the claim as exhibited by the facts set forth in the petition."

In *District of Columbia* v. *Barnes,* 197 U. S. 154, this court said:

> "The Court of Claims is not bound by special rules of pleadings. The main purpose is to arrive at and adjudicate the justice of alleged claims against the United States."

This is practically what this court held in its former decision of this case, viz., that the petition stated a sufficient cause of action, and if the facts there stated were true, appellants should have judgment. Every fact alleged in the petition is shown and admitted time and again by the Choctaw Nation through its National Council. What more can be required or demanded of appellants in the substantiation of their claim?

Conceding for the sake of argument alone that the case must be determined, technically, on *quantum meruit,* this question is so well treated by Mr. Justice Hay in the first decision, which we quote not as a rule of decision but as stating our contention much better than we can state it ourselves. He said:

> "It appears from the evidence that Samuel Garland *did* render services in bringing about the treaty of 1855, under which treaty the Choctaw Nation recovered the sum of $3,078,371.23; that he *continued* to render service after ratification of the treaty and *was instrumental in obtaining an appropriation of $250,000 and continued to perform services as delegate until his death in 1870.*
>
> The evidence submitted by claimants as to the value of the services rendered by Samuel Garland is the act *of the legislative council* of the Choctaw Nation which in the first place agreed to pay him and his associates 20 per cent of the amount of the judgment which they might recover as the result of work already done by them, and which they might thereafter do, and in the second place, after the delegates were dead, actually appropriated the money which they agreed to pay them. *It thus appears that the defendants themselves have acknowledged by their own acts that the plaintiffs are entitled to receive the amount of money for which they are suing and that their services are worth that much.* * * *"
> (Italics are mine. Appendix No. 6, p. 87.)

In the former decision of the case in the Court of Claims (54 C. Cls. 58) when, under that decision, the

case had been disposed of upon the questions of agency and right of the court to award judgment on the petition, the court practically holds that only for the presence of these questions, and because of their legal effect, it might "of necessity" be incumbent on the court to determine the case upon the theory we contend is the proper basis for its decision, viz., upon the contract and for money had and received by the agents of the nation and upon the misapplication of the fund by them. Speaking for the court, Mr. Justice Downey said:

> "If they (referring to LeFlore and McCurtain, the disbursing agents) were merely the agents of the nation appointed to discharge obligations of the nation to other individuals, and entrusted with money for that purpose, and other delegates or their beneficiaries stood in the relation of individual claimants, *it would then of necessity be incumbent to inquire and determine whether there was misapplication of the fund and by reason thereof to award and pay plaintiffs that to which they were entitled.*" (Italics mine.)

This court held that LeFlore and McCurtain were the agents of the nation; that the heirs of the delegates stood in the relation of other claimants in the preferment of their claim; it is admitted and found that LeFlore and McCurtain were entrusted with money for discharging the debt of the nation to the heirs of the delegates, and that there had been, at least to the amount of $338,045.65, a misapplication of the fund.

If the settlements between the delegates and the nation and the acts of its council thereon are given due faith and credit, the solution of the case is indeed simple, and had the court below in its last decision followed the theory above stated by Mr. Justice Downey, no difficulty whatever would have been had in determining the balance that was due to Garland upon the LeFlore-McCurtain settlement.

Services Rendered by Attorneys.

The court below devoted much of its findings and opinion to recitals of services rendered by the attorneys in the case. As the court viewed this feature of the case, these services might properly be taken into consideration in determining the value of the services rendered by the delegates and as a legal reason for reducing Garland's compensation.

If there was no contract between the delegates and the nation, as well as contract between the attorneys and the nation, and if there had been no settlements between the nation and the delegates, and acts of the Choctaw National Council approving these settlements, and the suit was on implied contract, then it might be necessary to make inquiry as to what services had been rendered severally by the delegates and the attorneys, and collectively and individually by the delegates.

Such, however, is not the case. We again take the liberty of quoting from the first decision by Mr. Justice Hay (Appendix No. 6, p. 88), as we have before stated, not as having established any rule of decision, but merely as expressing our contention more forcefully than we are capable of doing. He said:

> "* * * Much has been said in this case about the fees which were paid to the lawyers employed at different times. But there is nothing in the case to show that any part of the 20 per cent fund provided for the delegates of 1853 was to be charged with any part of the attorneys' fees. On the contrary, it appears that there was a separate contract made with respect to attorneys' fees, under which the attorneys were to receive 30 per cent of the recovery. And on February 25, 1888, the same day on which the act was passed appropriating 20 per cent of the fund for the payment of the delegation of 1853, another act was passed appropriating 30 per cent of the fund for the payment of the attorneys. *Thus the Choctaw*

Nation by its own action acknowledged both obligations and recognized them as distinct and separate from each other. * * *" (Italics mine.)

We submit that the question as to the services rendered by the attorneys is one wholly beside any question to be decided. That they were employed by the delegates, with the consent of the nation, is an established fact. Their employment being by the delegates, who, under the act creating the delegation had sole authority and plenary powers over the matters in question, the presumption must be indulged that whatever the attorneys did was under the direction of the delegates, all of whom, and particularly Pitchlynn, had long been among the leading men of the nation, and thoroughly informed regarding the nation's affairs.

If the court below had looked to the records of the nation as to what they disclosed regarding these ancient occurrences, instead of indulging in vague and vain surmises, all these questions which seem to have given it so much concern and about which the court was left in so much mental uncertainty, might have been less perplexing and more easily solved.

Services Rendered by the Delegates and the Value of the Same.

Because it is phrased so much better than we are able to state our contention on this question, we again make requisition on the decision rendered by Mr. Justice Hay regarding this phase of the case. He said:

"The evidence submitted by claimants as to the value of the services rendered by Samuel Garland is the act of the legislative council of the Choctaw Nation, which in the first place agreed to pay him and his associates 20 per cent of the amount of the judgment which they might recover as the result of work already done by them, and which they might there-

> after do, and in the second place, after the delegates were dead, actually appropriated the money which they agreed to pay them. *It thus appears that the defendants themselves have acknowledged by their own acts that the plaintiffs are entitled to receive the amount of money for which they are suing and that their services are worth that much!* * * *." (Italics are mine. Appendix No. 6, p. ....)

Upon the whole, this opinion and decision by Mr. Justice Hay is the nearest logical and rightful conclusion that has been reached by the Court of Claims in the case.

The opinion and decision by Mr. Justice Downey upon both legal questions decided was squarely reversed by this court (256 U. S. 439).

The last decision, now under review, is based, we respectfully submit, upon a wholly mistaken thory of the case, viz.: that the court was under mandate to decide the case solely and technically on the principle of *quantum meruit*, and under this direction or authority it might ignore all acts and laws of the Choctaw Nation, and rest its decision upon whatever theory it might choose to adopt. The theory chosen and followed and upon which the court's decision was predicated, was that the results obtained by the Choctaw Nation was due to the efforts of the attorneys and not those of the delegates, and that, as Garland had died before the final appropriation was secured, because of that, and for the reason first stated, the court would be justified in fixing Garland's compensation at less sum than that fixed by the contract and admitted by the nation to be due by act of its council.

This is *all* that there was before the court upon which it reached the conclusion that it did. No testimony whatever was taken on the question of the amount of services rendered by the delegation collectively or singly or the value thereof. True that Garland had died before the final judgment was recovered. If it be true as the court

finds, that all the services rendered after Garland's death in urging upon Congress an appropriation on the Senate award, the delivery of the bonds, and finally securing the jurisdictional act and litigating the case to final judgment, were rendered by the attorneys, they were doing only that which Garland and his co-delegates had under direction and authority of the nation employed them to do and for which they were most liberally compensated. In no wise should the fact that services were rendered by attorneys militate against Garland's claim for services as made. If the view taken of the question by the Choctaw Nation and as expressed in the acts of its legislative council has any probative value whatever, then the case is easy of solution. It is only when the court departs from these ancient landmarks erected by the nation itself, each telling its story as to what was being done by the delegates over a period of more than sixty-five years in respect to the very things upon which we are now seeking light, that it is left in the state of doubt and mental uncertainty of which it complains.

That Garland, as delegate, rendered services and services of the value that his cause of action is grounded on, is admitted by the Choctaw Nation in every act of its council that has spoken upon the subject, even to the last act of appropriation passed sixteen years after his death. Is this evidence to be overturned by the *theory* of the court that all services of value were rendered by attorneys, or because Garland died before the final appropriation was made? The nation considered Garland's services to be of the full value of his contract, appropriated the money to pay him, and it was largely illegally misappropriated by the nation's disbursing agents as is found by the court.

The plaintiffs in the court below rested their case upon the contract, settlements made between the delegates and the nation, acts of the council approving these settlements, and the final act of the council again admitting

that the services had been rendered and that appropriation was made in full to pay for them. No testimony was taken by defendants in the court below opposing or qualifying these admissions. No evidence was submitted calling into question the correctness of these admissions. The record showed the services rendered by the attorneys and delegates, and certainly the Choctaw Nation in 1861, 1867, 1873 and 1888, had more definite knowledge as to such services and their value than it is possible now to obtain. With this full knowledge, its acts were passed, the matters legislated upon being wholly within the scope of the authority of its legislative body. We submit that such action as was then taken has the force of law and should be respected by the courts.

Legal Effect of Enactments of the Choctaw Council.

Aside from the probative value of the legal enactments of the Choctaw Council in the establishment of facts therein recited, we submit that such legislation, unless opposed by constiutional inhibition or prohibited by federal statute, has the force of law as controlling in the internal affairs of the nation.

There can be no question that all matters under consideration in this case not only were within the jurisdiction and exclusive powers of the nation, but every such question was subject of legislation by the Choctaw National Council. Reviewing briefly these questions:

It delegated to P. P. Pitchlynn, Samuel Garland, Dixon W. Lewis and Israel Folsom, exclusive and plenary powers to take up, adjudicate and settle all claims of the nation against the United States;

It directed the delegates, in 1854, to proceed to Washington under their commissions to effectuate the purposes for which they were commissioned;

Upon the negotiation of the treaty of 1855, (which secured to the nation the payment of more than four mil-

lion dollars upon claims which *the nation though the delegation* asserted against the United States,) it ratified the treaty;

In November, 1855, through the Principal Chief, a contract was entered into between the nation and the delegation whereby the delegates were to receive 20 per cent upon certain claims they were then asserting against the United States. This contract was many times approved by the council;

It authorized the delegates to employ counsel to assist them in securing the treaty and in the prosecution of the nation's claims. These contracts were many times approved;

It sent the delegates each year from 1857 to 1861 to Washington directing them to press the claims of the nation against the United States;

In 1861, it directed the delegates to make report of their accomplishments under their commission and to make statement to the council of all money that had been collected through their efforts and that of their attorneys;

Upon the coming in of the report and accounting of the delegates, and upon the favorable report of its committee, on November 1, 1861, the council passed an act approving the report and accounting, and upon such of those items as were within their contract (the total amounting to $1,092,258.00) the delegates were allowed 20 per cent, or $148,451.00. Against this the delegates were charged for all moneys advanced to them, and obligations for which they were liable, and by legislative enactment it was acknowledged that there was then a balance due the delegation of $84,394.23.

In 1867 it sent the delegates to Washington with instructions to press the claim of the nation for the balance of the Senate award, $2,981,247.50; and for delivery of $250,000 in bonds due the nation under Senate appropriation.

In 1873, (anticipating payment of the last above,) it directed that the money should be paid into the Choctaw Treasury, and that settlement should be made with the delegates or their representatives, (two of the delegates, Garland and Israel Folsom had died in 1870,) under the delegates' contract for 20 per cent and with the attorneys under their contract for 30 per cent upon the amount received by the treasurer.

In 1888, judgment having been recovered on the "net proceeds" claim and payment made in the sum of $3,078,-370.23, it passed certain acts whereby LeFlore and McCurtain were directed to collect the amount due the delegates of 1853 and make settlement with the heirs of the delegates.

At the same time it passed an act declaring that there was due the delegates of 1853 the sum of $23,395.39, as a balance on the $84,394.23 legislated as due them in 1881, and 20 per cent under their contract upon the amount of the judgment. The total amount legislated as due the delegates was $638,944.36.

At the same time it passed an act declaring that there was due the attorneys 30 per cent upon the amount of the appropriation and the attorneys were fully paid.

It is shown by the settlement upon which this appropriation was made to pay the delegates, that against the $84,394.23, balance due on the settlement of 1861, they were charged with such money as they had received from the nation since the settlment of 1861, thereby reducing that amount to $23,395.39. (*Supra,* p. 17.)

From the foregoing we have this *legislated* status between the delegates and the nation:

In 1861 there was a full and complete adjustment of all transactions between the delegates showing that the nation allowed the delegates, under their contract, 20 per cent on sums collected, $141,451.00; that, after charging against the delegates all money advanced for expenses, obligations, etc., there was left due the delegates, $84,-394.23.

Had the court, under its supposed authority under the *quantum meruit* feature of the jurisdictional act, the legal right to ignore this status of the delegates as determined by the laws of the Choctaw Nation, and determine that the status was different to that found by the nation? Had the court the right to deprive the delegates of the compensation thus awarded the delegates as *earned compensation?*

The only other settlement between the nation and the delegates was that made under the final recovery of the $3,078,370.23 in 1889. This settlement was purely *ex-parte*. The delegates were all dead. LeFlore acting as representative of and McKee as attorney for the nation, stated the account, taking as the initial item the balance due on the settlement of 1861. Against this they charged the delegates with the money that they had received from 1861 to that date, and an obligation of $14,140 coming over from that settlement. (*Supra*, p. 17.) And upon this accounting and by adding $7,000 for some advance made to or obligation due by the delegation *not shown in the record,* the nation admitted its liability for $23,-395.44 as balance due the delegates of 1861 (*thereby again ratifying that settlement*), as well as its indebtedness to the four delegates, Pitchlynn, Garland, and the two Folsoms of 20 per cent on the recovery.

Had the court below the right, under its powers conferred by the jurisdictional act, to ignore the status of the delegates as creditors of the nation thus legislatively determined by the nation? When the court took items of indebtedness of the delegates to the nation that had been charged against the compensation allowed them by the nation in 1861, and then took other items of indebtedness of the delegates to the nation subsequent to 1861 and up to the final settlement in 1889, that had been charged against the balance due the delegates on the settlement of 1861 (this balance representing what had been due the delegates on *earned and allowed compensation* for

services to that date), and charged them as compensation in the "net proceeds" case, was it not taking from the delegates vested rights that had been given them by the laws of the Choctaw Nation?

Certainly all these were matters over which the Choctaw Nation had full control, and regarding which the Choctaw Council had full authority to act. Upon the authorities here cited we submit that the acts of the Choctaw Nation have not only probative value, but that they have the force of law. Not only should the nation's declaration as to facts stated be given full faith and credit, but its legislative action relating to its civil policy should be respected and taken as conclusive. If the case is determined upon this theory then its solution is simple.

The status of the Choctaw Nation with its form of government was at the time of these transactions identical with that of the Cherokees. In *Delaware Indians* v. *Cherokee Nation,* 193 U. S. 144, this court said:

> "* * * The Cherokee Nation has many of the rights and privileges of an independent people. They have their own constitution and laws *and power to administer their internal affairs.* They are recognized as a distinct political community and treaties have been made with them in that character. *Cherokee Trust Fund Cases,* 117 U. S. 288. (Italics mine.)
>
> The right of these Indians (Cherokees) residing within the limits of a state, *to regulate their own civil policy,* has never been questioned. * * * Their laws and customs *regulating property, contracts, etc.,* have been respected when drawn into controversy in the courts of the states and of the United States. * * * *Jones* v. *Laney, 2* Tex. 348. (Italics mine.)
>
> The Cherokees are governed by their own laws. As a people they are more advanced in civilization than the other tribes, with the exception, perhaps, of the Choctaws. By the National Council their laws are enacted and carried into effect through an organized judiciary. *U. S.* v. *Cox,* 18 Howard (U. S.) 102.

Their (the Cherokee) laws must govern the transactions that happen within their own borders. *Holland* v. *Peck*, Packs Tenn. R. 154.

The Cherokee Nation is a territory within the statute giving due faith and credit to the acts of the tribal officials. *Whitsett* v. *Foreham*, 79 N. C. 230.

Turner et als. v. *Fish*, 28 Miss. 306-311, holds that the courts may take judicial notice of the laws, or the acts of certain officers, of the government (referring to the Choctaw Nation.)

Charges of Certain Sums by the Court Against Garland, as Compensation, Not Authorized.

The court determined the value of Garland's services at $85,876.15. We take exception to the court's authority to so determine the value of his services, for the reasons hereinbefore stated and urged. This sum was arrived at by the court upon the theory that he had received this amount from the nation since his commission in 1853. Had he received more or less this sum, under the court's conception of its powers under the jurisdictional act, possibly a different measure of Garland's compensation would have been found. If this be the measure of his compensation, we submit that there was no authority in the court to absorb it by the charges made against it as was done by the court. (p. 22 Rec.)

$11,000 charged to Garland, as one of the items going to make this sum, was an amount of money advanced to Garland prior to 1861 for his expenses to and at Washington whence he came each year from 1857 to 1861 under the direction of the council in the prosecution of the nation's business. This sum was charged against him in the settlement of that year against fees or compensation allowed to him by the nation. The action of the court in going behind this settlement and the act of the council thereon, takes away from the appellants money that was earned and allowed by the nation to their

ancestor. Having thus been paid back the nation surely it cannot again be charged to Garland.

$18,731.86, another item charged to Garland, has no better standing than the item just discussed. This charge is upon the assumption that the delegates received, from the $112,000 U. S. treasury warrant, the sum of $74,-927.45. The amount actually received is shown in the settlement of 1888. (*Supra*, p. 17.) In that settlement the sum actually received, $30,275.84, *is charged against the $84,394.23, balance due on the settlement of 1861*, this being a balance due the delegates for services rendered by them to that date.

Having accounted for this sum *once* as a charge against compensation allowed Garland by the nation in 1861, upon contract and services performed thereunder, we submit that it isn't a proper charge against compensation the court allows to him in the "net proceeds" case. This not only charges him twice with the same amount but takes from him compensation theretofore earned and allowed to him by the nation.

This raises the question squarely: had the court the power under the jurisdictional act to deprive Garland of the compensation allowed to him by the nation in 1861? Is there any ground for the intimation that this legislation might have been due to some improper and undue influence on the part of Pitchlynn over the council at that time, when the compensation allowed was strictly within the delegates' contract? Is it not of significance that this settlement stood without question, so far as any action of the nation has been shown, for more than sixty years, and that finally in 1888, when all the delegates were dead and *finis* was being written to a narrative of events that began in 1853, there still was no question raised involving the integrity of the council of 1861 or of the delegates of 1853?

Another charge that the court makes by way of absorbing the $85,876.15, the sum the court determines as the

fair compensation to Garland for his services, is one-fourth of $25,000 (p. 22 Rec.) which the court finds is an obligation of the delegates and which we contend is an obligation of the nation. This question is determinable upon the interpretation to be given to a written obligation signed by the delegates. Our contention that it was a loan to the nation obtained by the delegates, and that the obligation of payment was on the part of the delegates for the nation and not that of the delegates themselves.

As this question involves the construction of the contract, the court below was requested to transmit this contract along with a number of contracts sent up as parts of the findings. This request was refused. In the motion to remand, it is requested that the court below be directed to transmit this writing (or a copy thereof) to this court. It is set out pp. 4-5, motion to remand.

Should this court determine that the sum received by the delegates from the $112,000 warrant was that found by the court, $74,927.45, and not $30,275.84, shown by the settlement of 1889, *and admitted by the nation in its confirmation of the account by the council by the act of 1888,* then surely the $30,275.84 charged against a balance due the delegates on account of fees allowed in 1861 should not be used again as a charge against what the court conceives to be a fair remuneration to Garland for his services in the "net proceeds" case. At the most, the $30,275.84 should be deducted from the $74,927.45, and the charge would be $44,651.61, and one-fourth of this would be $11,162.90 instead of $18,731.86, which we insist is the only possible charge that can be made against the one-fourth of the appropriation made by the council in 1888 to pay the delegates' claim except the $49,894.29 received from LeFlore. If this sum stands against Garland's compensation, it will be because the court was justified in adopting some theory of its own, refusing to follow or be bound by a settlement made by the representative of the nation LeFlore, and the attorney of the nation McKee,

now forty years ago, and approved at that time by the National Council, all of which actions have never been brought into question by any act of the nation and not until the claim was contested in the Court of Claims. The other item of charge made against the allowance made by the court as a reasonable fee to Garland, $11,000, was accounted for, as stated, in the settlement of 1861.

At p. 22, Record, in the opinion it is stated:

> "We have not, of course, disregarded these favorable manifestations in Garland's behalf. We have given them, along with the contract, the probative value we think they are entitled to receive. If they are conclusive, then obviously all we are to do under the order of remand was a bookkeeing accounting."
> * * *

As the case has developed upon the records of the nation, we respectfully submit that this *is* all there is to do and all that should be done, viz.: give appellants judgment for the amount that the nation appropriated as Garland's just compensation and which was withheld from him by the nation's disbursing agent.

All obligations of the delegates and all money advanced to them by the nation up to November 1, 1861, are shown by the nation's own records to have been charged against the compensation *determined by the nation to be due* the delegates at that date. The balance due the delegates was found to be $84,394.93.

All obligations of the delegates and money paid to them by the nation after that date, and up to final settlement in 1889, was charged against this balance shown to be due in 1861. This reduced the nation's indebtedness to the delegates on that balance to $23,395.39. This amount was admitted to be due by act of the council.

By the same act it was admitted that there was owing to the delegates by the nation 20 per cent upon the amount of the recovery in the "net proceeds" case.

On the same day appropriation was made to pay the sum due the delegates as determined by the nation itself.

Thereafter, this amount, $638,944.36, appropriated to pay the delegates—or their heirs—was paid over to the disbursing agents of the nation:

One-fourth of this appropriation of $638,-944.36 is.	$159,736.12
There was paid to the Garland heirs by Le-Flore.	49,894.29
Leaving a balance due them of	$110,041.83

One item of charge against Garland, if the court's view of the case prevails against the express acts of the nation, would be one-fourth of the $74,927.45, proceeds from the $112,000 warrant. As stated, unless he is to be charged *twice* upon the same item, $30,275.84 of this sum must be deducted from the $74,927.45 charge against Garland compensation (as above $11,162.90), thus leaving the balance due Garland $98,880.93.

Should it be held that the item of $25,000 is chargeable to the delegates, this sum due Garland would be further reduced by one-fourth of the $25,000, leaving the amount due Garland $92,630.93.

This statement as shown by the contemporaneous records of the Choctaw Nation, can not be controverted, and the effect of the same can be escaped only by ignoring them. They indisputably show a full accounting in 1861, with the balance then admittedly due the delegates and an accounting in 1888 with an admitted balance due them of $23,395.39. Upon both settlements there are acts of approval by the National Council. (Finding V, *Ibid.* and *Supra*, p. 17.)

Unless these credits allowed Garland by the nation are taken from him (as they were by the court's judgment), there is only one item of charge made towards absorbing the $85,876.15 (which the court conceived to

be the measure of the value of Garland's services in the "net proceeds" case), the $25,000 borrowed from the Loyal Choctaws. If this be determined as an obligation of the delegates and not the nation, and this court finds that the conclusion of the Court of Claims as to this item is not reviewable, then Garland would be chargeable with one-fourth of this sum, $6,250.00. This charge would reduce his claim, as we assert it, from $110,041.83, to $103,791.83.

The court below admits (p. 22, R.) that if the settlements between the delegates and the nation and the acts of the Choctaw Council are to be given probative value and legal effect, then, under the remand, the adjudication of the case is simply a matter of bookkeeping accounting.

This was the theory of the case as reported by the Congressional Committee (*Supra*, p. 32), and the theory upon which the declaration or petition was filed in the court below, and it was upon this theory that Mr. Justice McKenna said that if the allegations of the petition were true, that valuable services had been rendered for which Garland should be paid. (Garland case, 256 U. S., p. 439.)

How much he did not say, but the opinion clearly indicates that the question for decision was *as to what part of the $638,944.36, Garland was entitled.* Nothing to the contrary appearing, we submit that his interest was one-fourth as there were only four delegates for whom the appropriation was made.

If the jurisdictional act is taken as a purpose on the part of Congress to provide a forum wherein Garland's heirs might assert their claim against the Choctaw Nation [the claim, as shown by the report of the committee (*Supra*, p. 32), being for a balance due on the settlement that was made by LeFlore], then certain equity powers are given the court as it involves a matter of accounting. If this be true, this court will review the case not solely

upon the findings as sent up by the court but upon the evidence as well. *U. S.* v. *Old Settlers,* 148 U. S. 427, 481; *Harvey* v. *U. S.,* 105 U. S. 671, 691. It is there settled that the court will not go behind a treaty or an act of Congress which were alleged to have been procured by duress or fraud. (Old Settlers case, p. 466.) This rule, under authorities cited, is equally applicable to the laws of the Choctaw Nation relating to their internal affairs.

In the Old Settlers case, in the assertion of the claim, plaintiffs ran counter to certain treaties and act of Congress, and sought to go behind them upon the ground that they had been secured by duress and fraud. This court held that these treaties or laws would not be disregarded nor would it be held that they were inoperative on the ground alleged. (*Ibid,* p. 469.)

There is some analogy between the method employed in the determination of the case of the *Choctaw Nation* v. *The United States,* 119 U. S. 1, 44, and instant case.

In that case jurisdiction was given the Court of Claims to try all questions of difference arising out of treaty stipulations. The court was empowered to review these questions *de novo* and it was provided that the United States should not be estopped by the Senate award of $2,981,247.30.

The Court of Claims ignored this award, and upon *its theory of the case* gave judgment for $408,120.32.

The award was made upon an accounting had between the nation and the United States through the Secretary of the Interior.

While the court was not bound by this award under the express terms of the jurisdictional act, this court, in its reversal of the decision of the Court of Claims, held that this award furnished the nearest approximation to the right and justice of the case, that, *after the lapse of time,* it was practicable for a judicial tribunal to reach, and ordered judgment for the amount of the award.

In the instant case we have the legislative body of the Choctaw Nation on November 1, 1861, with full power over the matters it was dealing with, appointing an auditing committee to meet the delegates of 1853, and have an accounting from them of their acts under their commission. The accounting was had, and upon this the nation's approval was stamped by act of its council fixing the amount due the delegates was determined.

Again, in 1888, we have an accounting between the nation and the delegates, made after their deaths, by the agent of and the attorney for the nation, wherein the delegates are charged with moneys and liabilities since the former settlement. This settlement is approved by the council and the status of the heirs of the delegates as creditors of the nation fixed by act of the council, etc.

Upon this we have appropriation by the council for the payment of the amount *found by the council to be due the delegates*, and thereafter, *payment of the sum so found due to the disbursing agent of the nation.*

As stated by this court, *ibid.*, after the lapse of some *sixty years* in the one case and some *forty years* in the other, this action of the nation does more than furnishing the "nearest approximation to the right and justice of the case, that * * * it was practicable for a judicial tribunal to reach." It furnishes a basis for the determination, with mathematical certainty, of what is due appellants, and the amount for which judgment should be rendered. As stated, *supra*, the only item of the court's charge against the amount the court conceived to be the value of Garland's services, and not accounted for in the settlements referred to, is that of $25,000.00, and if this charge is not reviewable, it would serve to reduce the sum shown to be due Garland, $110,041.83, by one-fourth of that amount, viz., the sum of $103,791.83.

In conclusion, upon the merits of the case, we respectfully submit that this being a case for accounting, involving equity jurisdiction and powers, and all these acts of

the Choctaw Council being before the court, it may, if these records show the sum for which judgment should be rendered, this court should order judgment for such amount as it finds due to appellants.

Interest.

As shown herein, the heirs of Samuel Garland base their claim on the contract of 1853, whereby the nation was to pay the delegates 20 per cent on all money collected through their efforts upon certain claims the nation was asserting against the United States.

At the time the Jurisdictional Act was passed, May 9, 1909, the Choctaw Nation was indebted to Garland for his one-fourth of 20 per cent upon all moneys collected that fell within the terms of the contract, less all such sums as had been paid to Garland, and less such obligations as might lawfully be asserted against him. The date when this status of creditor and debtor is to be fixed is the date the Choctaw Nation, or its disbursing agents, received payment of the delegates' fees under the appropriation of Congress. This date is shown as July 28, 1888.

While the Jurisdictional Act directed judgment on the principle of *quantum meruit,* the claim was for a balance that was due Garland upon a settlement made with the heirs on January 12, 1889.

Even if the judgment must be rendered technically on the principle of *quantum meruit* (to which proposition we do not assent) and not on the theory of the petition, for a balance due on a contract for services performed, and upon an appropriation made to pay for these services, such action is similar to the common count in an action of assumpsit for work and labor performed on an implied assumpsit or promise on the part of the defendant to pay the plaintiff as much as he reasonably deserved to have for his labor according to the definition given by Blackstone. (Third Bl. Com., p. 161.)

It has been held in actions of assumpsit that interest is due after a default to pay upon demand made, or if no demand is made, from the commencement of the suit. *Gamel* v. *Skinner,* 9 F. Cases No. 5210, 2 Gall. 45; *Bernard* v. *Bartholomew,* 22 Pick. (Mass.) 291; *Dougherty* v. *Chapman,* 29 Mo. A. 233; *McIlvane* v. *Wilkins,* 12 N. H. 474; *Mahrim* v. *Bickford,* 6 N. H. 567.

In cases arising between attorney and client it has been held that interest will be allowed where the client was able to determine the amount, although the attorney may have claimed a greater sum than was actually due. Upon the determination of the relation of attorney and client, the former is entitled to pay for his services, and in default thereof interests accrues from that date. (*Gribble* v. *Ford,* Tenn. Ch. A., 52 S. W. 1007; *Comm* v. *Terry,* 11 Pa. Super. 547.)

If the judgment is to be rendered for as much as the appellant's ancestor deserved to be paid for his services, or for any balance due him on settlement, full compensation carries with it interest from the default until paid.

We are not met with the inhibition upon the Court of Claims against awarding interest against the United States, unless expressly authorized so to do by statute. This is a suit against the Choctaw Nation, and if there has been a withholding of appellants' money, to which they were justly entitled, by the nation, or those for whose acts the nation was liable, the measure of liability should be determined in the same manner as that of other litigants.

We think the rule may be stated as follows: Where money belonging to another is not paid over to the person entitled to receive it at the time it should be paid over, interest is allowed as damages for such wrongful withholding thereof.

HARRY PEYTON,
Attorney for Appellants.

APPENDIX.

No. 1.

Resolutions Creating a Delegation to Settle All Unsettled Business With the Government of the United States.

Sec. 9.—*Whereas*, The Choctaws were and ever have been dissatisfied with the manner in which the treaty of Dancing Rabbit Creek was made, owing to the many circumstances which were created to force them into it, and owing to the exceeding small and inadequate amount which was given as payment for their country; and whereas, a large number of claims on the United States, arising under the 14th and 19th and other articles of the treaty of 1830, are still remaining unpaid; and whereas, information has reached the Council that the demands of a portion of certain claimants have become prejudiced by the unauthorized interference of white men at Washington, who, without the knowledge or consent of the claimants, pretend to be their attorneys; and whereas, the claimants have, repeatedly, from time to time, called on the Council to assist them in procuring what is justly due them from the United States; and whereas, in the opinion of the Council a speedy and final settlement should be made with the United States of the foregoing specification. Therefore,

Resolved, That P. P. Pitchlynn, Israel Folsom, Dixon W. Lewis and Samuel Garland, be and are hereby appointed delegates, and fully empowered to represent and to institute, in behalf of the Choctaw people, a claim upon the United States, for the pay and remuneration of the country which they deeded to the United States Government, east of the Mississippi River, and protect and defend all and every right and interest of the Choctaws, arising under treaty stipulations or otherwise.

BE IT FURTHER RESOLVED, That the said delegates are hereby clothed with full power to settle and dispose of by treaty, or otherwise, all and every claim and interest of the Choctaw people against the Government of the United States, and to adjust and bring to a final close all unsettled business of the Choctaw people with the said Government of the United States.

BE IT FURTHER RESOLVED, That in case of resignation or death of any of the said delegation above mentioned, the chiefs have the power to appoint any person to fill such vacancy in his district.

BE IT FURTHER RESOLVED, That the chiefs be required to inform the Government at Washington, through the proper channel, of the appointment of said delegation of the Nation, of their powers and of the fact that no other person, whatsoever, is authorized to act for or represent Choctaw claimants at Washington.

BE IT FURTHER RESOLVED, That the agent for the Government be requested to accompany said delegation and to aid them with his counsel and official influence in effecting the object of their visit.

Approved November 9, 1853.

No. 2.

Report of the Committee on the Mission of the Choctaw Delegation:

To the Honorable the members of the Senate and House of Representatives of the Choctaw Nation assembled in council:

Your committee to whom was referred the Resolution of the General Council dated June 4th, 1861, 1st instruction to ascertain minutely from the Choctaw Delegation, viz.: P. P. Pitchlynn, Israel Folsom, Samuel Garland and Peter Folsom in regard to their mission to sue and prosecute the Government of the United States "upon all claims" that may be due the Choctaw Nation, and to ascertain what amount is actually due said Nation from

the United States and ask them for a settlement thereof; have had the same under consideration and investigation and now agree on the following report accompanied by a bill for the consideration of the General Council.

In pursuance of the Resolution referred to the Committee called on the Delegation for a full report of their mission. In pursuance of this call they have rendered their Report dated October 22nd, 1861, which is herewith submitted. In that report you will find that the sum of two million three hundred thirty-two thousand five hundred and sixty dollars and eighty-five cents has been allowed by the old government of the United States as the sum due the Choctaw Nation and have appropriated five hundred thousand dollars as part payment or as an advance made on the $2,332,650.85.

The delegation further state that out of the sum of five hundred thousand dollars set apart as an advance on the sum above mentioned there was paid to Genl. D. H. Cooper the sum of $134,512.85 for the purchase of corn in accordance with the order of the General Council as by act passed by General Council in October, A. D. 1860, and the sum of $115,487.45 was turned over to the Choctaw Delegation in sight draft and specie which amount added to the sum received by Genl. D. H. Cooper amounts to the gross sum of $250,000 two hundred and fifty thousand dollars just one half of the five hundred thousand dollars appropriated by the Federal Congress as above stated.

The other half of the appropriation referred to the Delegation states was not paid over to them for want of sufficient authority. So then the sum of two hundred and fifty thousand dollars paid to Genl. D. H. Cooper and the Choctaw Delegation as above stated from the sum of $2,332,560.85 allowed by the old Government leaves as a balance due the Nation the handsome sum of two millions eighty-two thousand five hundred and sixty dollars and eighty-five cents ($2,082,560.85) the collection of this

amount together with over a million of dollars invested in stocks and yet in the hands of the Federal Government depends upon the early ratification of the treaty concluded between the Commissioners duly appointed for that purpose by the Choctaws and Chickasaws and the Confederate States of America as well as upon the success and independence of the states.

You will also find in the Report of the Delegation that they consider their services as no longer required as far as the prosecution of the claims as above mentioned since all that remains to close the whole matter is an appropriation on the part of the Confederate States in accordance with the treaty should that treaty be ratified. From this statement the Committee beg leave to refer back to the General Council for their own consideration the question as to how much the old Government of the United States actually owe the Nation.

The accompanying document marked "A" shows the Choctaw Nation to be indebted to the Choctaw Delegation and their attorneys the sum of Eighty-four thousand three hundred and ninety-four dollars and twenty-three cents. The Document marked "C" more minutely (shows) the basis of the settlement had and agreed to by the Committee and with the Choctaw Delegation and shows that the sum of $70,254.23 is still due the Delegates jointly provided does borrow the sum of twenty thousand two hundred and sixty dollars.

The document marked "B" shows the amount due the attorneys provided the Nation does not borrow the sum of $20,260 for which amount if borrowed the Nation is to pay interest at the rate of 8 per cent per annum. The Committee being aware of this fact that the Nation needed funds to enable her to sustain her credit although largely indebted to these parties called on them (the Delegates) to loan the sum above stated with reference to the settlement had with the Delegates and their attorneys. Your Committee would remark that these delegates were entitled to (20) twenty per cent upon all moneys

which they may have recovered from the Government of the United States under a contract which was made with them by the several chiefs of this Nation in the year 1855 in accordance with a Resolution of the General Council passed in that year and that their attorneys to have 30 per cent upon all moneys recovered in behalf of the Nation under a contract entered into by them with the Delegation in pursuance of authority granted by the General Council in the year 1853 (See printed Laws page 54 and 55) approved Nov. 9th, 1853, and payments have been made from time to time under several Acts of the Choctaw General Council carrying into effect the contracts alluded to.

Your Committee cannot do otherwise than to allow the Delegation and their attorneys the following fees due them upon moneys recovered under their respective contracts.

1st. To-wit, the sum of two hundred thousand dollars as a fee on the sum of four hundred thousand dollars known as the relinquishment fund for land lying west of one hundred degree West Longitude and described in the Treaty of 1855. Loan to Cochran.

2nd. The sum of one hundred and twenty-five thousand dollars as a fee in the sum of two hundred and fifty thousand dollars known as the Nett Proceeds funds. The payment of which sum was noticed in the Report of the Delegation herewith submitted.

3rd. The sum of forty-six thousand one hundred and twenty-nine dollars and twenty cents as a fee allowed on the sum of ninety-two thousand two hundred and fifty-eight dollars and forty cents known as "Arrearage Funds" or money. Adding their several amounts of fees together it makes the gross sum of three hundred and ninety-one thousand three hundred eighty-nine dollars and twenty cents on which sum the Nation has paid three hundred and six thousand nine hundred and ninety-four dollars and ninety-seven cents leaving a balance due the Choctaw Delegation and their attorneys in the sum of eighty-four

thousand three hundred and ninety-four dollars and twenty-three cents as stated in the Document marked "A" herewith submitted. The payment of the sum of $89,-600.00 is the proceeds of a dft for the sum of $112,000 which is described more particularly in the accompanying papers the amount was thus rendered owing to the fact that it was originally a sight draft to be at U. S. Treasury at New York City. It has been satisfactorily shown to the Committee by the gentlemen who negotiated and attended to the collection of the draft and that too through an enemies country that the charge of twenty per cent is both reasonable and just, as the expense of transportation exchange and risk without any compensation for labor and care on the sum of $62,500.37 alone amounts to nearly if not quite ten per cent.

There yet remains to be collected and transported from the enemies country forty thousand dollars and for which purpose as well as compensating the negotiators of the draft their twenty per cent as allowed by the Committee.

Your Committee entertains no doubt that this expense of twenty per cent on the sum of $112,000 will be cheerfully and freely allowed and paid by the Confederate States under the Treaty of July 12th, 1861, should that treaty be ratified.

In conclusion your Committee beg leave to be discharged from the further consideration of the subject committed to their investigation by act of the Council. All of which is respectfully submitted.

Doakesville Choctaw Nation
October 23rd 1861

(Signed) R. M. Jones
Chairman of the Committee

Whereas: It appears to the satisfaction of the General Council of the Choctaw Nation that Messrs. P. P. Pitchlynn, Isreal Folsom, Samuel Garland and P. Folsom and their attorneys were entitled to the sum of three hundred and ninety-one thousand three hundred and

eighty-nine dollars and twenty cents as fees to have accrued on the following sums of money. Viz: Four hundred thousand dollars known as the Relinquishment fund, two hundred and fifty thousand dollars known as the Nett Proceeds fund, forty-six thousand one hundred and twenty-nine dollars and twenty cents known as the Arrearage fund or money the same being in accordance with certain contracts entered into, which were duly authorized under act of the General Council of the Choctaw Nation and whereas the aforementioned delegates have received the sum of three hundred and six thousand nine hundred and ninety-four dollars and ninety-seven cents as part payments made from time to time under several Acts of the General Council and which payments deducted from the sum of three hundred and ninety-one thousand and three hundred and eighty-nine dollars and twenty cents leaves a balance due the Delegates and their Attorneys in the sum of eighty-four thousand three hundred and ninety-four dollars and twenty-three cents. And whereas the sum of twenty thousand two hundred and sixty dollars is offered as a loan by the Delegation to draw interest at the rate of 8 per cent per annum and the same having been acceded to by the General Council of the Choctaw Nation:

Therefore.

"Be it enacted by the General Council of the Choctaw Nation that the sum of eighty-four thousand three hundred and ninety-four dollars and twenty-three cents be and is hereby acknowledged to be due to Messrs. P. P. Pitchlynn, Isreal Folsom, Samuel Garland and Peter Folsom, and their attorneys" to be paid to them whenever the Choctaw Nation shall realize any portion of the payment to be made by the Confederate States on the sum of two millions three hundred and thirty-two thousand five hundred and sixty dollars and eighty-five cents agreeably to the stipulations of the Treaty of July 12th 1861, and that the same is thus due to the Delegates and their attorneys is hereby appropriated.

Be it further enacted that the sum of twenty thousand two hundred and sixty dollars offered as a loan by the Delegates to be used for National purposes be and the same is hereby accepted and received as a loan to bear interest at the rate of 8 per cent per annum until paid and that the National Treasurer is hereby instructed to receive the same subject to the order of the National Auditor as other funds belonging to the Nation.

Be it further enacted. That the Auditor of Public Accounts is hereby authorized to issue his warrant on the National Treasury of the Choctaw Nation as evidence of the loan made payable to the Delegates and their attorneys with interest at 8 per cent per annum until paid and to be paid out of any money belonging to the Nation other than the amount herein borrowed.

Passed at the House of Reps.
Nov. 1st 1861 Basil Leflore, Speaker

Passed the Senate
Nov. 1st 1861 Stephen Holsom
President of Senate

Approved November 1st 1861
Eastman Lowman
P C C N Pro tem

Report of the Choctaw Delegation viz: P. P. Pitchlynn, Isreal Folsom, Peter Folsom and Samuel Garland in compliance with the resolutions of the Choctaw General Council.

R. M. Jones and others Committee.

Gentlemen.

We are fully prepared to make a satisfactory settlement with the Council upon all matters touching the business of our mission to the Government of the United States as well as to answer any and all questions which may be put to us respecting the same belonging that you will render ample justice and carry into effect the contracts made with the proper authorities of the Nation allowing us certain contingent fees to be computed upon all monies recovered or secured under several treaty stipulations.

We therefore beg leave to make the following Reports.

REPORT

That after a long time in the prosecution of Choctaw Claims arising under the Treaty of 1830 concluded at Dancing Rabbit Creek between the United States and the Choctaw Nation have at last succeeded in the recovery of $2,332,560.85. This sum of money would have been duly arranged for its disbursement by the late session of Congress thereby meeting the requirements of the 12 Article of the Treaty of 1855 June 22 was it not for the exhausted state of the Treasury of the U. S. at the time it was under consideration as well as the threatened collision of the forces of the Northern and Southern states which was then fully anticipated it would take place to prove this we would state that the Senate of the U. S. was willing to pay and did pass a Bill appropriating the sum of twelve hundred and fifty thousand dollars $1,200,000 as an advancement on the amount found due the Choctaws but the House of Representatives curtailed the Senates appropriation down to five hundred thousand dollars it being the effect of a confusion had on the subject by the two houses of Congress in making the above appropriations of half a million of dollars it was understood that it was to be only a part payment on the original amounts as above stated. In other words the Congress allowed the claim of the Choctaws and appropriated a half million of dollars as part payment the remaining amounts to be settled when in funds. So we view the case in point to be an admitted fact and it has been decided in favor of the Choctaws and the services of the delegates are no longer required so far as the prosecution of the claim above referred to is concerned it only requires the appropriation to be made to close the whole matter.

Statements respecting the appropriation of half million of dollars and payments made therefor

Viz:

Congress appropriations as per act to be in bond but afterwards converted into U. S. Treasury six per cent notes made payable to P. P. Pitchlynn (still in the U. S. Treasury)	$250,000
Congress appropriation as per Act to be in money	$250,000
Congress appropriation half a million	$500,000

Cr.

By Genl D. H. Cooper as per Act of Choctaw General Council authorizing him to use this amount for corn	$134,512.55
This amount per P. P. Pitchlynn, Peter Folsom, Isreal Folsom	3,487.45
Dft. on the Sub Treasury U. S. N. Y. Payable to P. P. Pitchlynn	$112,000
	$250,000.00
Treasury notes still undrawn	$250,000.00

In conclusion we beg leave to suggest that in the event of the Choctaws joining their destiny with the Confederate States of the South immediate payment of all monies due the Choctaws from the old Govt. of the U. S. whether by appropriation by Congress as in the case above stated or from interest due on invested stock in the hands of the old Govt. should be required and entered into by treaty so that the wheels of our Indian Government here could be rolling as well as the keeping of the militia of our country in good trim, etc.

Very respectfully submitted

P. P. Pitchlynn
Isreal Folsom
Samuel Garland
Peter Folsom

Oct. 22nd 1861

N. B. With reference to the Committee a conference on the disagreeing votes of the Congress of the U. S. respecting the sum of twelve hundred and fifty thousand

dollars and the cause why it was reduced to five hundred thousand dollars the undersigned delegates would further state in their Report that the reduction was made owing to the news that the Choctaw Nation had joined her destiny with the Southern States otherwise the sum of twelve hundred thousand and fifty dollars would have been paid. Whenever our mission and the whole business connected therewith authorized under the several Acts of the Choctaw Council are about to be closed financially we will render a more complete of all and every transaction and labor under the authority referred to.

Signed by the Delegates. P. P. P. &c.

The Choctow Nation in a/c with the Choctaw Delegation

Dr.

To amt. of fees due on $400,000 known as the Relinquishment fund.	$200,000.00
To amt. of fees due on $250,000, on a/c of the Nett Proceeds fund under treaty of 1855..	125,000.00
To amt. of fees due on a/c of arrearage money the sum of $92,258.40.	46,129.20
To amt. cash borrowed of the Choctaw Delegates this 22nd Oct. 1861 for which they expect they the Nation to allow them interest at the rate of 8 per cent per annum until paid.	20,260.00
	$391,389.20
1861 Oct. 23	
To this amt. due the Choctaw Delegation the amt. borrowed as above.	$84,394.23

Dr.

By this amt. pd. by John Page Nt'l Treasurer.	$125,630
By this amt. pd. D. H. Cooper at Washington	7,100
By this amt. on arrearage money.	10,000
By this amt. by acts of Council from 1857 to 61.	40,500
By this amt. as per Report Choctaw Del. . . .	27,677.52
By this amt. Nett Proceeds.	3,487.45

By this amt. ex. pd. Forbes Leflore per act of Council 1860	300.00
By this amt. proceeds Warrant No. 2879 No. 4069 pd. Treasury of the U. S. at New York dated and registered 13th April 1861 payable at sight to P. P. P. &c	112,000.00
less expense of negotiation and transporting the same.	
say 20 per cent	89,600.00
By this amt. due the delegation	84,394.23
	$391,389.23

The above document is marked A

Document "B"

The Choctaw Nation in a/c with John S. Cochran Atty.

Dr.

To amt. of his fee on $400.000 known as the Relinquishment 30 per cent as per contract of the Choctaw Delegation with the said Cochran	$120,000
To amt. of his fee on Nett proceeds fund of two hundred and fifty thousand dollars	75,000
To amt. of his fee as per contract on arrearage money	27,677.52

Dr.

By this amt. pd. by John Page Nat'l Treasurer	$120,000
By this amt. pd. by Choct. Del. as per Report	27,677.52
By this amt. pd. to Genl. D. H. Cooper	7,100
By this amt. now held subject to the order of the Choctaw Del	53,760.00
By this amt. balance due him	14,140.00
	$222,677.52

To amt. balance due him this Oct. 23 A. D. 1861

Document marked C.

The Choctaw Nation in a/c with the Del

Dr.

To this amt. of fee of 20 per cent on the sum of $400,000 known as the relinquishment fund.	80,000
To this amt. of fee of 20 per cent on $250,-000 Nett proceeds.	50,000
To this amt. of fee on arrearage fund at 20 per cent on $92,255.40.	18,451.68

Dr.

By this amt. pd on arrearage money.	7,500.00
By this amt. pd on arrearage money.	250.00
By this amt. paid by John Page Treasurer. . .	5,630.
By this amt. paid per acts of the Council 1857 to 1861.	8,000.
1858.	11,000
1859.	12,000
1860.	8,000
1861.	1,500
By this amt. pd at Wash Nett Proceeds.	3,487.45
By this amt. pd Forbes Leflore as per act of Council 1860.	3,000.00
To this amt. due the delegation for which they are to receive interest at the rate of 8 per cent per annum.	20,260.00
By this amt. pd to the Del proceeds of the dft of 112,000.	35,840.00
	70,254.23
By this amt. bal due the delegation.	70,251.
Oct. 23 1861 168,711.68. . . . 168,711.68	

I hereby certify that the foregoing is a true and correct copy of the original filed in the office of the National Secretary.

Given under my hand and private seal there being no public one this 7th day of November A. D. 1861.

L. P. PITCHLYNN (Seal)
National Secretary.

Attest:
E. DWIGHT
National Secretary.

No. 3.

Defendant's Exhibit No. 2.

Statement of Disbursement of 20 Per Cent.

Fort Smith, Ark., *July 3, 1889.*

To the Choctaws of the Choctaw Nation and the representatives of the delegation of 1853 I submit this itemized statement of the 20 per cent due said delegation, and received and disbursed by me:

Total amount received			$638,944.36
Cr.			
Paid P. P. Pitchlyn		$107,311.29	
Paid I. Folsom	$44,244.29		
Collected for Choctaw Nation	1,650.00		
		45,894.29	
Paid Samuel Garland		49,894.29	
Paid P. Fulsom	45,894.29		
Collected for Choctaw Nation	1,059.10		
		46,953.39	
			250,053.26
			388,891.10
Paid delegates of 1866 on account with delegates of 1853:			
Allen Wright		2,972.46	
John Page		2,972.46	
James Riley		2,972.46	
Alfred Wade		2,972.46	
			11,889.84
			377,001.26
Paid eastern boundary delegates as per contract with delegates of 1853:			
D. F. Harkins		2,586.12	
McKee King		2,586.12	
Wm. Robuck		2,586.12	
			7,758.36
			369,242.90
Paid Blunt and loyal Choctaws per agreement with delegates of 1853			25,000.00
			344,242.90

Paid from memorandum of P. P. Pitchlyn:

J. F. McCurtain	$20,000.00	
James Thompson	20,000.00	
Thos. Lanigan	10,000.00	
Wm. Robuck	5,000.00	
W. B. Pitchlyn	4,000.00	
Mishamantubbee	2,500.00	
C. E. Nelson	5,000.00	
McKee King	2,500.00	
Sampson Fulsom	5,000.00	
John McKenney	2,000.00	
Peter Noel	1,000.00	
B. L. Leflore	2,000.00	
J. P. Turnbull	1,000.00	
S. M. Grayson	6,000.00	
S. C. Pomroy	10,000.00	
J. J. Weed	396.50	
E. S. Mitchell	3,000.00	
J. W. Denver	5,230.00	
James Trahern	1,000.00	
Adam Christa	2,000.00	
		107,626.50
		236,616.40

Paid on promises made at Tushkahomma:

Hy McBride (see his letter)	$10,000.00	
D. N. Robb	6,270.00	
J. S. Standley	2,500.00	
J. M. Hodges	5,000.00	
Thompson McKinney	5,000.00	
J. J. Phillips (for T. D. A.)	5,000.00	
Green McCurtain	5,000.00	
Judges Dukes	1,500.00	
C. Leflore, services as delegate	20,000.00	
E. McCurtain	5,000.00	
Sam Holsen	1,500.00	
H. E. McKee for Allinton Telle	1,000.00	
Nelson McCoy	1,000.00	
Joel Hudson	1,000.00	
John Garvin	1,000.00	
Wm. Fry	500.00	
C. Leflore was paid for services and money furnished before he was commissioned delegate	13,750.00	
		$85,020.00
		151,596.40

Nine thousand five hundred and eighty-three dollars paid to Col. Pitchlynn by Allen Wright was credited to the nation by Col. Pitchlyn as a payment to the delegation, and used by him according to his statement to pay expenses, for which expenses he is allowed by this settlement $5,000 a

year; therefore the other delegates should receive one-fourth each of this sum, say, $2,395.75, except $1,000 less to Samuel Garland for his note held by Mrs. Pitchlynn, viz:		
Israel Fulson	$2,395.75	
Peter Fulsom	2,395.75	
Sam'l Garland	$2,395.75	
Less	1,000.00	
	1,395.75	
Making to be charged to Col. Pitchlynn	6,187.25	6,187.25
		145,399.15

This balance of $145,399.15 was paid to H. E. McKee as delegates' part of general expenses.

Fifteen hundred dollars advanced to Julius Fulsom by the nation, with $150 interest thereon, making $1,650, charged to the delegation, should be charged to the estate of Israel Fulsom as advanced to Julius Fulsom and one-fourth of that sum, or $412.50, to be credited to P. P. Pitchlynn, Samuel Garland, and Peter Fulsom.

Services of Delegates in Washington, D. C., Commencing in Washington in '54.

P. P. Pitchlynn, 1854 to 1881, 23 years; Dixon W. Lewis, 1854 to 1856, 3 years; Sam'l Garland, 1854-5-6 and '69, 4 years; Israel Fulsom, 1854-5-6, '61 & '67, 5 years; Peter Fulsom, 1861-8-9 and '81, 4 years; C. Leflore, 1885 to 1888, 4 years; E. McCurtain, 1888, 1 year. Compensation for delegates' services commenced in 1866 from the fact that the settlement of 1861 closed all their business to that date and was approved by the council.

There is allowed:

P. P. Pitchlynn, from 1866 to 1881, 15 years' service	$75,000.00
Samuel Garland, 1866 and '69, 2 years' service	10,000.00
Israel Fulsom, for 1867, 1 year's service	5,000.00
Peter Fulsom, for 1868-9 and '81, 3 years' service	15,000.00
C. Leflore, for 1885 to '88, 4 years' service	20,000.00
E. McCurtain, for 1888, 1 year's service	5,000.00

Cochnauer and Harkins' Agreement.

We, the undersigned chiefs, do hereby agree that the delegation, viz, P. P. Pitchlynn, Israel Fulsom, Samuel Garland, and Dickson W. Lewis, shall receive 20 per cent upon all claims arising or accruing to the nation or to individuals under the treaty of June 22nd, 1855, for their services in negotiating said treaty and for other services which are to be rendered hereafter at Washington, but it is distinctly understood and agreed upon that said delegation are to receive no fees for the lease money nor from the funds which the Chickasaws are to pay for jurisdiction granted them in the treaty.

In testimony whereof we hereunto set our hands and seals, given this the 21st day of November, 1855.

[SEAL] N. Cochnauer.

[SEAL] Geo. W. Harkins.

McBride's Letter.

Lehigh, I. T., October 25, 1888.

Hon. Campbell Leflore, Fort Smith, Ark.

Dear Sir: Yours of the 2nd to hand. I notice what you say in regard to the Smallwood matter. I don't know who is doing the talking, but I know this much: I collected the amount and paid him *his part*, just as *he and I agreed*, before the last session of council was called. I haven't defrauded him out of one cent, and I am certain he understands and knows the agreement, and all was correct.

Respectfully,

Hy. McBride.

Report of Leflore and McCurtain to Choctaw General Council.

To the honorable the general council of the Choctaw Nation:

We beg leave to make the following report in accordance with the acts of the council passed and approved on the 25th day of February, 1888.

The Congress of the United States appropriated $2,858,798.62, together with interest on said amount at 5 per cent per annum from the 16th day of December, 1886, to the 29th day of June, 1888, being $219,305.10, making in all $3,078,103.72 in payment of the judgment of the Court of Claims.

Of this amount there has been drawn from the United States Treasury, on requisitions made in accordance with the acts of council, the following sums, to-wit:

Favor of J. B. Luce et al	$129,939.93
Favor of H. E. McKee	783,763.82
Favor of Choctaw treasurer	89,248.36
Favor of Choctaw delegation	638,944.46
Making in all drawn	1,641,896.57

The balance remaining in the Treasury of the United States, subject to the requisition of the general council, $1,436,207.15.

The amount drawn in favor of the Choctaw treasurer was forwarded direct to him from the Treasury of the United States.

The amounts drawn by H. E. McKee and J. B. Luce, and the assignees of Luce, were paid to them, respectively, directly from the United States Treasury, and were accepted by them in full and complete satisfaction of all indebtedness to them by the Choctaw Nation, as provided for in their respective contracts in connection with the prosecution of the Choctaw net-proceeds claim.

The twenty per cent due the Choctaw delegation was paid directly to us from the Treasury of the United States and was disbursed as follows:

Ascertained amount of expenses and obligations incurred in the prosecution of the claim, $356,600.30.

Ascertained amount due the delegates for time and personal expenses, $130,000.

Amount distributed to the delegates over and above the allowance to them for time and personal expenses, $152,344.16; amounting in all to $638,944.46.

And we further report that the construction put by the Secretary of the Treasury on the act of council under which requisition was made for the payment of Luce deprived Luce of the interest appropriated by Congress, to which he is clearly entitled, as will appear by the act of council providing for the payment of the contracts of Luce, McKee, and Blount, and the interest so lost to Luce amounts to $10,975.04, which amount we hope the council will pay to him by a special act.

Respectfully submitted.

CAMPBELL LEFLORE,
EDMUND MCCURTAIN,
Choctaw Delegates.

Tushkahomma, C. N., Oct. 9, 1888.

DEFENDANTS' EXHIBIT No. 4.

The Choctaw Nation in account with the delegation of 1853, composed of P. P. Pitchlynn, Samuel Garland, Israel Folsom, Dickson W. Lewis, and Peter Folsom, now represented by Campbell Leflore, their successor and survivor in office.

Dr.

For their fees of 20 per cent on $2,858,798.62, the amount of the judgment of the Court of Claims rendered December 15, 1886, in favor of the Choctaw Nation, as provided in their contract dated November 21, 1855, the sum of	$571,759.72
And in addition thereto whatever may be appropriated by the United States for interest on that amount.	
For balance still due and unpaid to the delegation under the settlement of November 1, 1861, as shown by a statement hereto attached, and marked "A"	30,395.39
	602,155.11

And interest as above on $571,759.72.

The above and foregoing statement is true and correct, as ascertained from all the data now in possession of the delegation and attorneys.

CAMPBELL LEFLORE,
Choctaw Delegate.
H. E. MCKEE,
Attorney for Choctaw Nation.

Washington, D. C., January 16, 1888.

STATEMENT A.

By the act of the general council of November 1, 1861, making a settlement with the delegation and its attorneys up to that time, it is declared that there is due to the delegation and the attorneys the sum of $84,394.23; and it is declared that there is due to the delegation and the attorneys the sum of $84,394.23; and it is further shown by the papers thereto attached that of this sum $14,140 is due to John T. Cochrane, and the sum of $70,254.23 is due to the delegation.

From this balance of		$70,254.23
Must be deducted the following amounts subsequently paid to them on account of that debt, and which were not charged against them in that settlement, viz:		
In 1861, out of money brought to the nation by Stark & Hotchkins	$15,071.37	
In 1862, out of money brought by same parties	15,204.47	
In 1866, paid by Allen Wright, treasurer, to P. P. Pitchlynn	9,583.00	
		39,858.84
Balance still due delegation		30,395.39

No. 4.

(We give only such paragraphs from this letter from LeFlore to McKinney, P. C. Choctaw Nation, as are pertinent to the questions under discussion. It was put in evidence upon stipulation, and is pp. 506, 508, Rec. Court Claims.)

"This contract (with McKee and Blunt) is practically nothing more or less than the substitution of McKee and Blunt for Cochran, *they being obligated to pay, out of the thirty per cent, ALL EXPENSES INCURRED IN THE PROSECUTION AND RECOVERY OF THE CLAIM OF THE CHOCTAWS.* Under this contract the prosecution has been conducted by McKee and his associates, including Luce, up to this time—seventeen and a half years—Blunt having died.

* * * I fear that unless a satisfactory reconcilliation can be effected between the Choctaws and their attorneys, this money, so long and anxiously waited for by both the Choctaws and those engaged in the recovery of it, must remain beyond their reach.

* * * The appropriation to pay our judgment has been left out of the deficiency bill—its proper place; and I am satisfied it will not be made this Congress in any bill unless an amical adjustment is made in reference to the payment of these attorney's fees. And I am further satisfied that if such adjustment is made it will greatly aid in securing the appropriation at the present session. There is no way that this can be done without the act of the council, and the sooner that is done the better. * * *" (Italics mine.)

No. 5.

An Act, Asking for the Payment of the Judgment of the Court of Claims of the United States in Favor of the Choctaw Nation.

Whereas, the Court of Claims of the United States, pursuant to a mandate of the Supreme Court of the United States, did, on the 15th day of December, 1886, render a judgment in favor of the Choctaw Nation for two million eight hundred and fifty-eight thousand seven hundred and ninety-eight dollars and sixty-two cents ($2,858,798.62);

And, whereas, the Choctaw Nation, by its delegate, Campbell Leflore, did, by a memorial presented to Congress, demand from the United States the payment of the said judgment;

And, whereas, the United States have failed to pay said judgment: Therefore,

Be it enacted by the General Council of the Choctaw Nation assembled, That the said memorial demanding an appropriation for the payment of the said judgment is hereby approved and adopted.

2d. Be it further enacted, that the Congress of the United States is hereby requested to appropriate the full amount of the said judgment and interest thereon from the date of the rendition thereof, as and for a permanent and continuing appropriation, not subject to lapse or to be covered into the treasury of the United States; the same to be paid over from time to time, and in such sums and at such places as may be required, directly to the national treasurer of the Choctaw Nation, or to such agent or other person as shall be named in the requisition of the proper authorities of the Choctaw Nation; and the proper authorities of the Choctaw Nation, for the purpose of making such requisition or requisitions, is hereby declared to be the General Council of the Choctaw Nation, or such officer or other person as shall be designated and authorized by an Act or resolution of the said General Council for that purpose; and such requisition or requisitions, when made, shall be taken and accepted as, and is, and are, hereby declared to be, the requisition of the proper authorities of the tribe, provided for by Article XII of the treaty of 1855.

3d. Be it further enacted, that the foregoing Act shall take effect and be in force from and after its passage, and all Acts in conflict with this Act are hereby repealed, especially an Act passed and approved October, A. D. 1873, "defining the duties of the national treasurer in connection with the net proceeds claim."

This bill is reported to the General Council, with the recommendation that it pass.

February 22, 1888.

BENJ. J. WOODS,
Chairman Committee.

Approved February, 25, 1888.

T. J. MCMINNEY,
Prin. Chief C. N.

This is to certify that the above and foregoing is a true and correct copy from the original Act now on file in this office.

Witness my hand and the seal of the Choctaw Nation this the 9th day of June, A. D. 1888.

A. TELLE,
Nat. Secty. C. N.

(Seal)

(P. 123, Orig. R.)

No. 6.

COURT OF CLAIMS OF THE UNITED STATES

No. 30252

(Decided March 12, 1917)

Ellen Garland, Thomas A. Garland, Leonidas M. Garland, Margritte Garland, and Ellen Garland; Bonnie May Cole, Rogers L. Cole, Presley B. Cole, Jr., Edward Garland Thomas, Pleasant McBride, Goodwin B. Stealey, Laurenzo P. Stealey, Cathleen Stealey, John M. Rogers, and Georgia McCaffree, Heirs of Samuel Garland, Deceased,

vs.

The Choctaw Nation.

This case having been heard by the Court of Claims the Court, upon the evidence, makes the following

FINDINGS OF FACT

I.

On the 9th day of November, 1853, the Legislative Assembly of the Choctaw Nation, by a resolution, created a delegation composed of Samuel Garland and three other persons authorizing and empowering it to settle all of the unsettled business between the Choctaw Nation and the United States.

In pursuance of this resolution Samuel Garland and the other members of the delegation went to the city of Washington and began negotiations for the settlement of all claims which the nation had against the United States. As a result of these negotiations the treaty of June 22, 1855, was entered into between the Choctaw Nation and the United States. By virtue of this treaty the claims of the Choctaw Nation were submitted to the Senate of the United States for adjudication. On March 9, 1859, the Senate of the United States passed a reso-

lution adjudicating these claims, and as a result of the action of the Senate the Secretary of the Interior was called upon for an account to be stated between the Choctaw Nation and the United States, which account showed that the United States was indebted to the Choctaw Nation in the sum of $2,981,247.30.

On March 2, 1861, Congress passed an act appropriating $250,000 in part payment of the sum ascertained to be due said nation.

On March 3, 1881, an act was passed by Congress conferring upon this Court jurisdiction to try all questions of difference arising out of treaty stipulations with the Choctaw Nation and render a judgment. This Court gave a judgment in favor of the Choctaw Nation for the sum of $408,120.32. From this judgment an appeal was taken to the Supreme Court of the United States, and at the October term, 1886, of that Court a decision was rendered, the result of which was that this Court entered a judgment for the Choctaw Nation in the sum of $2,858,798.62. On June 29, 1888, Congress passed an act appropriating the aforesaid sum, with interest at the rate of 5 per cent per annum from the 6th day of December, 1886, to the 29th day of June, 1888, making a total sum of $3,078,311.23.

II.

After Samuel Garland and his associates had negotiated the treaty of June 22, 1855, the principal chief and two district chiefs of the Choctaw Nation on the 21st day of November, 1855, entered into a contract with Samuel Garland and his associates by which they agreed on the part of the Choctaw Nation to pay Samuel Garland and his associates "twenty per centum upon all claims arising and accruing to this nation or to individuals under the treaty of June 22, 1855, for their services in negotiating said treaty and for other services to be rendered hereafter at Washington." This contract was approved as required

by the third section of the schedule of the Choctaw constitution on the 18th day of October, 1868. On the 25th day of February, 1888, the Choctaw Nation passed an act whereby it in terms appropriated 20 per cent of the judgment which it had obtained against the United States for the payment of Samuel Garland and his associates the amount of money due them under the contract of November 21, 1855. The preamble to this act reads as follows:

"Whereas the delegates of the Choctaw Nation of 1853, composed of P. P. Pitchlyn and others, have recovered from the United States a judgment in favor of the Choctaw Nation for $2,858,798.62, and whereas under the contract of the Choctaw Nation with said delegates dated November 2, 1855, it is entitled to be paid twenty (20) per cent of said judgment: Now, therefore, be it enacted."

III.

By four resolutions passed, respectively, in 1854, 1857, 1858 and 1867, the Choctaw Nation recognized that these delegates were in their employ and were performing services for the Choctaw Nation.

IV.

On February 25, 1888, an act was passed by the legislative assembly of the Choctaw Nation deputing Campbell Leflore and Edmund McCurtain to collect from the United States the 20 per cent due Samuel Garland and his associates. Twenty per cent of said judgment was $638,-944.36. This sum was collected from the United States by Campbell Leflore. One-fourth of this sum was $159,-729.85. Campbell Leflore, on July 3, 1889, paid to the heirs of Samuel Garland the sum of $60,000. Samuel Garland died in 1870.

The delegation of 1853 had incurred obligations to the amount of $19,648.67. One-fourth of this amount, $4,912.19, must be deducted from the share of Samuel

Garland. The total amount received on the share of Samuel Garland is $64,912.19, which taken from $159,729.85, leaves $94,817.66.

V.

About the year 1870 Samuel Garland departed this life, leaving a will bequeathing to his wife, Mary P. Garland, his share of the amount of money due him from the Choctaw Nation by reason of his services as a member of the delegation of 1853. In the year 1887 Mary P. Garland departed this life, leaving a will by which she bequeathed to her daughter, Mary Eliza Rogers, one-third of the fund and to the children of Mary Eliza Rogers one-third, and the remaining one-third of the claim against the Choctaw Nation to David C. Garland, her grandson. The heirs of Samuel Garland are Ellen Garland, Thomas A. Garland, Leonidas M. Garland, Margritte Garland and Ellen Garland; Bonnie May Cole, Rogers L. Cole, Presley B. Cole, Jr.; Edward Garland Thomas, Pleasant McBride, Goodwin B. Stealey, Laurenzo P. Stealey, Cathleen Stealey, John M. Rogers and Georgia McCaffree.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the Court decides as a conclusion of law that the claimants named in Finding V are entitled as heirs of Samuel Garland to recover the amount shown in Finding IV. It is therefore ordered and adjudged by the Court that the claimants recover of and from the Choctaw Nation the sum of ninety-four thousand eight hundred and seventeen dollars and sixty-six cents ($94,817.66).

HAY, *Judge,* delivered the opinion of the Court:

The heirs of Samuel Garland are suing the Choctaw Nation for a balance alleged to be due them by reason of services performed for the Choctaw Nation by Samuel Garland.

The history of this case is that on the 9th day of November, 1853, the legislative assembly of the Choctaw Nation created a delegation composed of Samuel Garland and three other persons and authorized and empowered it to settle all of the unsettled business between the Choctaw Nation and the United States.

Samuel Garland and the other members of the delegation, in pursuance of this action of the Choctaw Nation, went to the city of Washington and began negotiations for the settlement of all claims which the nation had against the United States. As a result of those negotiations the treaty of June 22, 1855, was entered into between the Choctaw Nation and the United States. This treaty was ratified by the Senate February 21, 1856. By virtue of this treaty the claims of the Choctaw Nation were submitted to the Senate of the United States for adjudication. The Senate of the United States, on March 9, 1859, passed a resolution adjudicating these claims, and as a result of the action of the Senate the Secretary of the Interior caused an account to be stated between the Choctaw Nation and the United States, which account showed that the United States was indebted to the Choctaw Nation in the sum of $2,981,247.30.

It further appears that on March 2, 1861, Congress passed an act appropriating $250,000 in part payment of the sum due said nation, and that sum was duly paid to the Choctaw Nation.

Nothing further was done by Congress in this matter until March 3, 1881, when an act was passed by Congress conferring upon this Court jurisdiction to try all questions of difference arising out of treaty stipulations with the Choctaw Nation and render a judgment. The Court of Claims rendered a judgment in favor of the Choctaw Nation for the sum of $408,120.32. From this judgment an appeal was taken to the Supreme Court of the United States, and at the October term, 1886, of that Court a decision was rendered, the result of which was that this Court entered a judgment for the Choctaw Nation in the

sum of $2,858,798.62. On June 29, 1888, Congress passed an act appropriating the aforesaid sum with interest at the rate of 5 per cent per annum from the 6th day of December, 1886, to the 29th day of June, 1888, making a total sum of $3,078,371.23.

After Samuel Garland and his associates had negotiated the treaty of 1855, to-wit, on the 21st day of November, 1855, the principal chief and two district chiefs of the Choctaw Nation entered into a contract with Samuel Garland and his associates by which they agreed on behalf of the Choctaw Nation to pay Samuel Garland and his associates "twenty per centum upon all claims arising and accruing to this nation or to individuals under the treaty of June 22, 1855, for their services in negotiating said treaty and for other services to be rendered hereafter at Washington." This contract was approved, as required by the third section of the schedule of the constitution, on the 18th day of October, 1868. On the 25th day of February, 1888, the Choctaw Nation passed an act whereby it in terms appropriated 20 per cent of the judgment which it had obtained against the United States for the payment to Samuel Garland and others the amount of money due them under the contract of November 21, 1855, and in the preamble to this act the Choctaw Nation solemnly admitted their indebtedness to Samuel Garland and his associates and declared that they were entitled to be paid 20 per cent of the judgment under their contract of November 2, 1855, thus ratifying said contract.

The aforesaid preamble reads as follows:

"Whereas the delegates of the Choctaw Nation of 1853, composed of P. P. Pitchlyn, and others, have recovered from the United States agreement in favor of the Choctaw Nation for $2,858,798.62; and whereas under the contract of the Choctaw Nation with said delegates dated November 2, 1855, it is entitled to be paid twenty (20) per cent of said judgment: Now, therefore."

It will be noticed that in the act of February 25, 1888, the date of the contract is given as November 2, 1855,

when the contract itself was dated November 21, 1855. This is clearly a clerical error, and there can be no doubt that the contract of November 21, 1855, was referred to in the act of February 25, 1888.

On the 10th day of November, 1854, a resolution was passed in the Choctaw Council which instructed Garland and his associates to remain in Washington and press the claims of the Choctaws. On November 4, 1857, after the treaty of June, 1855, the general council of the Choctaw Nation passed another resolution instructing Garland and his associates to proceed to Washington to urge a speedy conclusion of the unsettled business arising under the treaty of June, 1855. This was also after the contract of November 21, 1855.

On the 27th day of October, 1858, another resolution was passed by said council conferring power on Garland and his associates with respect to all matters of the eastern boundary line of the Choctaw Nation.

On November 18, 1867, the said council passed another resolution directing Garland and his associates to proceed without delay to Washington City for the express purpose of bringing the net proceed question to the notice of Congress and to ask an early appropriation to carry into effect the treaty of June 22, 1855. Thus on four different occasions the Choctaw Nation recognized these delegates to be in their employ and to be performing services for the nation. And then, as is shown above, the contract of November 21, 1855, agreeing to pay them for their services, was approved on the 18th day of October, 1868, as required by the constitution.

It thus appears that the Choctaw Nation itself held itself bound to pay to Samuel Garland and his associates 20 per cent on the amount which the United States paid to the Choctaw Nation, and no question was ever raised as to the right of these delegates to their compensation as provided for in the contract of November 21, 1855, until the money was collected by an agent of the Choctaw Nation.

On February 25, 1888, another act was passed by the legislative assembly of the Choctaw Nation deputing Campbell Leflore and Edmund McCurtain to collect from the United States the 20 per cent due Samuel Garland and his associates; and by another act, passed on the same day, it was provided as follows: "Section 1. That the sum of twenty (20) per cent of the amount appropriated by Congress as payment of said judgment is hereby appropriated out of said fund and directed to be paid to Campbell Leflore and Edmund McCurtain, delegates and successors to P. P. Pitchlyn and other delegates of 1853 to enable them to pay the expenses and discharge the obligation in the prosecution of said claim and to settle with the respective distributees of said delegation." Twenty per cent of said judgment was $638,944.36. This sum was collected by LeFlore and was paid out by him. It is alleged that he had not properly paid out said sum of money, and that the claimants have not received their share of said money, which they allege was $159,729.85.

There is in the record a paper which purports to be a memorandum or settlement made by Campbell Leflore, showing how he disbursed the 20 per cent fund. It is not alleged that this paper is the original account, or that any account was rendered by Leflore to any one of his transactions as delegate for the disbursement of this fund.

It does not seem that this paper, in its character *ex parte*, should be taken as conclusive, but can only be given such weight as other and more direct evidence in the case might be corroborative of it.

It appears from the evidence in this case that Campbell Leflore paid to the heirs of Samuel Garland at Fort Smith, Ark., on July 3, 1889, the sum of $60,000.

This Court is authorized by the act of May 29, 1908, to adjudicate this claim "and to render judgment thereon in such amounts, if any, as may appear to be equitably due * * * said judgment to be rendered on the principle

of *quantum meruit* for services rendered and expenses incurred."

It appears from the evidence that Samuel Garland did render service in bringing about the treaty of 1855, under which treaty the Choctaw Nation recovered the sum of $3,078,371.23; that he continued to render service after the ratification of the treaty and was instrumental in obtaining an appropriation of $250,000, and continued to perform services as a delegate up to the time of his death in 1870.

The evidence submitted by the claimants as to the value of the services rendered by Samuel Garland is the act of the legislative council of the Choctaw Nation, which in the first place agreed to pay him and his associates 20 per cent of the amount of the judgment which they might recover as the result of work already done by them and which they might thereafter do, and in the second place, after the delegates were dead, actually appropriated the money which they had agreed to pay them. It thus appears that the defendants themselves have acknowledged by their own acts that the plaintiffs are entitled to receive the amount of money for which they are suing, and that their services are worth that much.

The only question which seems to be in doubt is, did Campbell Leflore, out of this 20 per cent fund, pay out any money which these delegates had promised to pay to third persons, and for which they were legally bound as a delegation to pay, and which should be deducted from their share of the 20 per cent fund. There is no evidence of this, but it is suggested in the *ex parte* memorandum above referred to. It seems that the following items were obligations for which the delegation was bound:

Amount paid delegates of 1866	$11,889.84
Amount paid eastern boundary delegates	7,758.83
	$19,648.67

One-fourth of this amount is $4,912.19, and it should be deducted from any balance which may be found due to the heirs of Samuel Garland.

Much has been said in this case about the fees which were paid to the lawyers employed at different times. But there is nothing in the case to show that any part of the 20 per cent fund provided for the delegation of 1853 was to be charged with any part of these attorneys' fees. On the contrary, it appears that there was a separate contract made with respect to attorneys' fees, under which the attorneys were to receive 30 per cent of the recovery. And on February 25, 1888, the same day on which the act was passed appropriating 20 per cent of the fund for the payment of the delegation of 1853, another act was passed appropriating 30 per cent of the fund for the payment of the attorneys. Thus the Choctaw Nation by its own action acknowledged both obligations, and recognized them as distinct and separate from each other.

The Court is therefore of opinion that the plaintiffs are entitled to recover from the defendants the sum of $159,729.85, less $64,912.19. The judgment will be for $94,817.66.

Downey, *Judge;* Barney, *Judge;* Booth, *Judge,* and Campbell, *Chief Justice,* concur.

HARRY PEYTON,
Attorney for Appellants.

In the Supreme Court of the United States

October Term, 1926.

No. 42.

THE HEIRS OF SAMUEL GARLAND, *Appellants,*

vs.

THE CHOCTAW NATION, *Appellee.*

Appeal from the Court of Claims.

APPELLANTS' MOTION TO REMAND.

HARRY PEYTON,
Attorney for Appellants.

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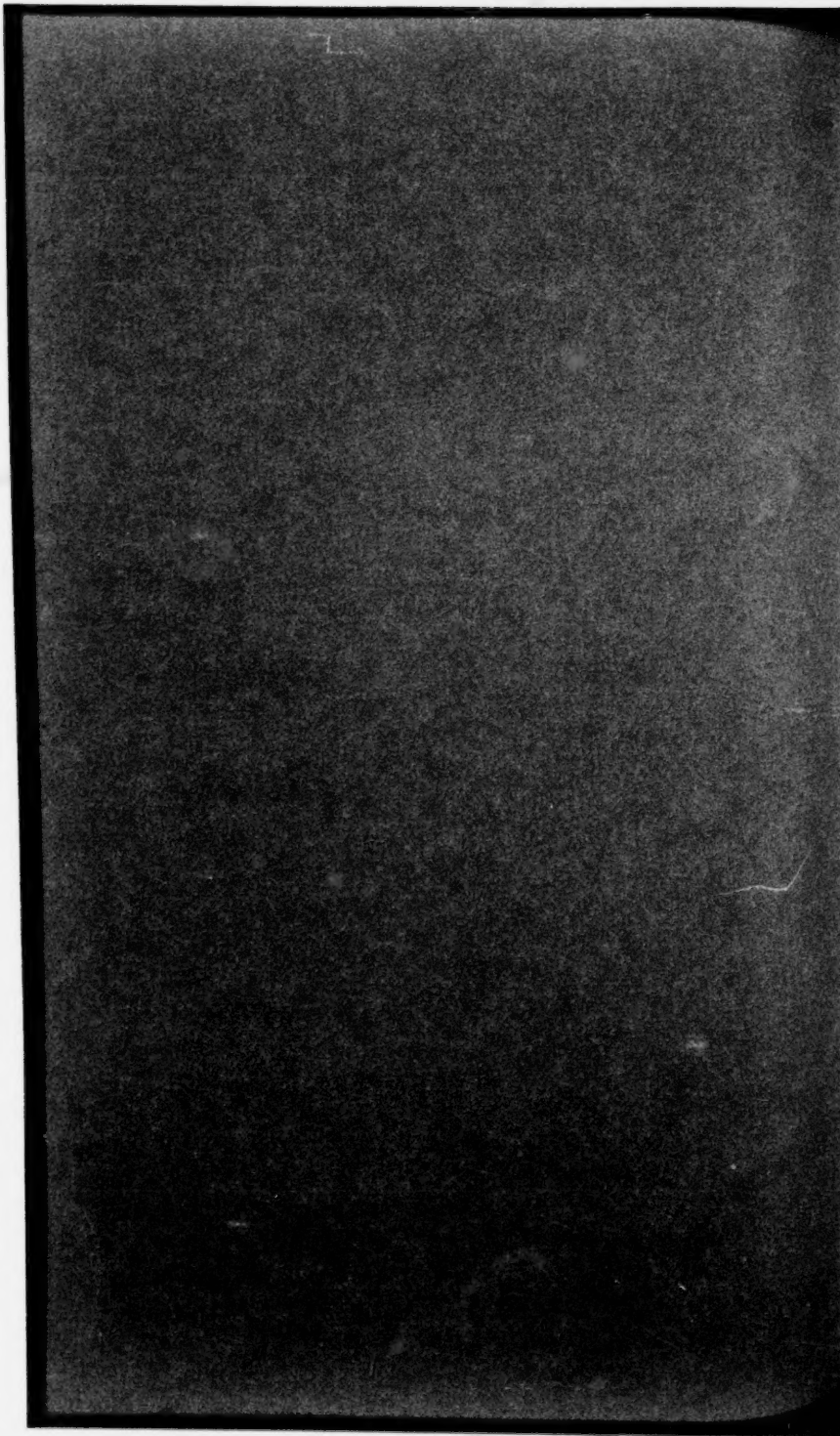

In the Supreme Court of the United States

October Term, 1926.

THE HEIRS OF SAMUEL GARLAND, *Appellants,*

vs.

THE UNITED STATES.

Appeal from the Court of Claims.

No. 42.

MOTION TO REMAND.

Comes the appellants herein and move the court to remand this case to the Court of Claims with the following directions:

1. To transmit to this court a certain act of the Choctaw Council of date November 1st, 1861, and along therewith the report of the delegates of 1853; the account between the delegates and the nation and the report of the auditing committee of the council on said delegates' account and settlement.

(Appendix to Appellants' Bf. No. 2, pp. 57-68.)

Memorandum on this request. The act of the council of the Choctaw Nation above referred to was before the court below in certified form, it not appearing in the compilation of the Laws of the Choctaw Nation of 1869. It was admitted as evidence without objection. In fact, the defendant requested that the act be found. After referring to the act of the Choctaw Nation appointing a committee to audit the delegates' account (Laws Choctaw Nation 1869, p. 354), the defendant stated and requested:

> "Pursuant to the above the committee made its investigation and reported to the Choctaw Council. Its report was adopted, and on November 1, 1861, the Choctaw Council passed an act containing the following:
>
> *Be it enacted by the general council of the Choctaw Nation assembled,* That the sum of $84,394.23 be, and the same is hereby acknowledged to be due to Peter P. Pitchlynn, Israel Folsom, Samuel Garland and Peter Folsom." (Rep. 98, p. 124.)
>
> (Defendant's Brief, C. Cls., R., p. 392.)

The court finds that such settlement in 1861 was made showing the above balance due the Choctaw Nation. (Finding V, p. 5, Record.)

All other acts of the Choctaw Nation relating to the questions involved are either sent up with the findings or referred to in the brief by the Compiled Statutes of 1869, and were before the court below. Certainly this, possibly the most important of any of the legislative enactments of the Choctaw Council respecting the dealings between the nation and the delegation (unless they be those of 1888, which are fully found) should be before this court.

The act is based upon the settlement made by the delegates and the nation on the date of the act, as well as upon the report of the auditing committee of the council, and the report of the delegates to the council.

The very vital importance of the settlement is to show

that the council allowed to the delegates compensation upon money secured to be paid to the nation under the treaty of 1855 (and under their contract whereby they were to receive 20%), in the sum of $148,541.00; that the sum reported as received by the nation under the treaty of 1855 was $1,092,258. After charging to the delegates all money advanced to them and obligations to date, the balance found to be due the delegates, $84,-394.23, was acknowledged by the act to be due them.

Furthermore, among the items charged to Garland by the court as against the compensation allowed by the court is his proportion of $40,500.00, money advanced to them from 1857 to 1861, and charged to the delegates in 1861 against the compensation then allowed them.

Assuming this court will consider the Act of 1861, but may possibly decline to direct the court to transmit the settlements and reports of November 1, 1861, appellants submit the alternative motion that the Court of Claims be directed to find from the evidence before it (the court refers to the settlement, Finding V, p. 5) whether or not such evidence shows:

First, that in the settlement of 1861 the delegates of 1853, Peter P. Pitchlynn, Samuel Garland, Israel Folsom and Peter Folsom, were allowed compensation for services rendered to that date in the sum of $148,451.00, being 20% upon certain sums received by the nation under the treaty of 1855;

Second, whether or not in that settlement there was charged against the delegates' compensation thus allowed, the sum of $40,500.00 for money advanced by the nation to the delegates from 1857 to 1861. (pp. 609, 610, Ct. Clms. Rec.)

(Appendix to Appellants' Bf. No. 3, p. 68.)

Memorandum on these requests. Garland's proportion of these charges against compensation allowed him as above is charged by the court, as stated, against what

the court conceived to be the value of his service in the prosecution of the "net proceeds case." This raises at once the legal question as to the right of the Choctaw Nation to allow the compensation it did (which the court disregards); and the equitable question as to whether or not Garland should be *charged twice with the same sum.* (P. 22, Record.)

2. That the Court of Claims transmit to this court the agreement of the delegates of 1853, dated February 11, 1869, whereby they obligated themselves to pay to James G. Blunt, the assignee of Sampson Folsom, the sum of $25,000.00.

Memorandum on this request. Appellants (as well as appellants in the Pitchlynn case) contend that this was an obligation on the part of the delegates undertaken as such for the nation and not for themselves; that the sum named represented a loan to the nation and not to the delegates.

The determination of this question rests almost wholly upon the written obligation. This involves a construction of the same, and the instrument should be before this court.

If we may refer to the investigation made by the Shanks Committee of the House of Representatives, which inquired into this transaction, it will there be found that Henry E. McKee, then the attorney for the Choctaw Nation, under a contract made with him by the delegates under authority given them by the nation, threw very much light on this transaction. This report is H. Rep. 98, 42nd Cong., 3d Sess., found in Cong. Series No. 2458, and was before the lower court.

The obligation of the delegates is as follows:

> "We, the undersigned delegates from the Choctaw Nation, with full power and authority to do whatever in their judgment may be necessary and proper to secure payment to the Choctaw Nation of the net proceeds for their land ceded the United States under the treaty of Dancing Rabbit Creek September 30,

1830, do hereby reaffirm the obligation entered into November 16, between themselves and Sampson Folsom for the payment of $25,000 out of the *'net proceeds'* when collected, and hereby agree, and bind ourselves to pay said sum to James G. Blunt, assignee of Sampson Folsom, as the net proceeds of said land are paid by the Government of the United States to the Choctaw Nation, *it being understood that in consideration thereof the said Blunt agrees and binds himself to do all in his power and use all his influence in procuring an appropriation by Congress for the payment of the net proceeds. Feb. 11, 1896.*

(Italics mine.)

Signatures, P. P. PITCHLYNN
PETER FOLSOM
SAMUEL GARLAND."

(Court of Claims Record, p. 489.)

A very full explanation of this transaction is given by Henry E. McKee to the Shanks Committee (Rep. 98, *Ibid.*), then the attorney for the Choctaw nation as stated. (*Ibid.*, p. 693.)

We would submit, in ascertaining the facts of transactions that occurred more than fifty years ago, these ancient contemporaneous records should have and should be given the greatest probative value. Except insofar as these records served to support the court's theory of the case, under its conception of its authority under the Jurisdictional Act, they were all, settlements, laws of the Choctaw Nation, etc., etc., ignored by the court. Rep. 98 being a congressional document, and before the court below, is, we submit, cognizable by this court.

Regarding this transaction, McKee said:

"I can't state precisely from memory or without having the papers before me, but my recollection is, that the award by the commissioners to the Choctaws amounted to about $109,000, and interest. By compromise which I think was effected by Blunt on the one hand as attorney, and Sampson Folsom as attorney for the Choctaw Nation on the other hand, a specific sum was to be paid in full satisfaction

of the claims which, if I recollect rightly, saved to the nation the interest awarded to the claimants. In connection with this compromise there was an arrangement between the parties which was a part of it, though not apparent on its face, by which the loyal Choctaws were to advance *to the nation,* or its attorneys, $25,000. This $25,000 amounted to about 23 per cent of the whole award to the Choctaw Claimants, and when the money was paid to each individual by the United States agent, this 23 per cent was first paid to some one who was there to receive it—I think C. B. Johnson—by the claimant; and after that was paid, they then paid Blunt his 35 or 50 per cent of the remainder, as the contract called for. This advance of $25,000 *was to be refunded to the loyal Choctaw* claimants and Blunt, as their attorney, *out of the first money realized out of the claims of the Choctaw Nation against the Government known as the 'net proceeds claim,'* and this claim has not yet been paid, and hence these loyal Choctaw claimants have not yet realized the full benefit of the award, nor has Blunt received the full amount of his fee as stipulated, nor can he until this claim of $25,000 is refunded. * * *" (Rep. 98, *ibid.*, p. 693 C. Cls. Rec. 488, 489. (*Italics mine.*)

There can be no question from the foregoing that the $25,000.00 was an obligation of the nation and not of the delegates. In settling with the loyal Choctaws on its obligation to them of $109,000.00, the nation was permitted to postpone the payment of this sum and pay it when the "net proceeds" was collected. This transaction was in no wise involved with the prosecution of the "net proceeds" by Pitchlynn and other delegates. The consideration of their promise (as delegates to do whatever in their judgment may be necessary and proper to secure payment to the Choctaw Nation of the "net proceeds," etc.), or for their guarantee as delegates thus empowered, to pay Blunt when the net proceeds was collected the $25,000.00, was *that Blunt would "do all in his power and use all his influence in PROCURING AN APPROPRIATION by Congress to pay the 'net proceeds.'"* (*Italics mine.*)

This obligation expressly states, "It being understood that in consideration thereof," etc., that they bound themselves as delegates to pay such sum.

That Blunt (not anyone else, for that matter) procured an appropriation to pay the Senate award in the net proceeds case, is a self-evident fact, and had this obligation or guarantee been one of the delegates personally, to see that the $25,000.00 was paid to Blunt by the nation when the net proceeds was paid, the consideration for their promise failed.

The bearing that this item has upon the case is that the court below charges Garland with one-fourth of this sum, $6,250.00, as money received—and likewise the same charge is made against the Pitchlynn claim—against the compensation it conceives to be the value of Garland's services in the "net proceeds" case. In other words, this compensation is, to this amount, absorbed.

This was nothing more than an obligation of the nation to the loyal Choctaws, and when we find (as is well found by the court) that LeFlore charged against the delegates' fund in his hands as disbursing agent for the nation, all manner of illegal (and many of them corrupt) payments, at least to the extent of $338,045.65, well may it be inferred that he added to these illegal disbursements (if, in fact, they were made as he states) this obligation of the nation. This theory is far better sustained than any other.

3. That the court be directed to send up the settlement of Campbell LeFlore, dated July 3, 1889, in full as set out pp. 172, 180, C. Cls. Rec.

Memorandum on this request. The court below, as to the claim for compensation in the "net proceeds" case, has made the findings in the Pitchlynn case, No. 43, October term, 1926, common to the instant case.

In that case, pp. 47, 53, the court has set out *a part only* of the LeFlore report of 1889. We submit, in common fairness to appellants in this and the Pitchlynn case,

that the report should be set out in full. If no report at all had been sent up with and as a part of the court's findings, and there was no element of equity jurisdiction involved, possibly this court might decline to have the report sent up.

The report as sent up *purports to be the whole report,* which it is not. Some of the vital findings of the court are based on this report *as made to appear in the report as found.* We say, most emphatically, upon the entire report, these findings would not be justified, and as they —such findings—take from appellants property rights given them by the Choctaw Nation, the report, as a whole, should be reviewed by this court. The report is set out in full in the appendix to appellants' brief, pp. 69-75.

This report shows the method employed by the Choctaw Nation in determining the balance, $23,395.49, due the delegation on the settlement of 1861. The abstract fact that there was such balance due the delegates is found by the court.

(Finding V, p. 5, Rec.)

The value of this report as showing a vital fact is that it accounts for $30,275.84 charged against the delegates and against the balance of $84,394.23 legislated as owing to the delegates on November 1, 1861, for services acknowledged by the nation to have been rendered to that date. The court finds (Finding V, p. 5, Rec.) that the delegates had been paid that sum, but does not find that this payment was on account of and against said balance due in 1861. Our complaint is that the court charged this sum (or one-fourth thereof) against the compensation it conceived as the value of Garland's services in the "net proceeds" case, and to that extent absorbed the allowance it made, when it had been charged in the settlement of 1888 against the balance due by the nation to the delegates in 1861.

It is difficult to harmonize the purpose of the Garland Jurisdictional Act directing the Court of Claims to award to appellants what was *equitably* due for the services of their ancestor, if they are to be deprived of compensation allowed Garland for services then rendered (in 1861) and thus charge him twice with the same sum.

Should this court see proper to decline to direct the court below to send up the full report of LeFlore, as requested, then in the alternative it is moved that the court be directed to find:

First. Whether or not the evidence before the court showed that there had been charged by LeFlore and McKee in 1888 against the $84,394.23, found by the court as shown by the Act of 1861 to be due the delegates, the following sums:

1861, out of money brought to the nation by Stark and Hotchkiss	$15,071.37
1862, out of money brought by same parties. . .	15,204.47
In 1866, paid by Allen Wright, treasurer, to P. P. Pitchlynn	9,583.00

Second. Whether or not the evidence showed that the money above stated came through Stark and Hotchkiss and was on account of proceeds of a $112,000.00 U. S. treasury warrant turned over to the treasurer of the Choctaw Nation in 1861 by the delegates.

Third. Whether or not, in charging to the delegates $74,927.45, the court below took into consideration the above charges of $15,071.37 and $15,204.47 as made by LeFlore and McKee against the balance due the delegates on the settlement in 1861.

Fourth. Whether or not the $9,583.00 charged to the delegates as above against their compensation allowed them in 1861, is any part of the $11,417.00 charged by the court (p. 36, R.) against his, Pitchlynn's, compensation in the "net proceeds" case, as allowed by the court.

Memorandum on this request. Each of these propo-

sitions involve vital, crucial facts in the case, which are material in the determination of the questions involved. We have iterated and reiterated so often regarding these questions that we will finally dismiss them with the statement that they involve indisputible facts not found in terms by the court. They further involve the general question as to whether or not compensation legislated to the delegates by the nation can lawfully be taken from them under *any* theory of the case. Every charge that the court makes against the compensation of Garland except liability for the $25,000.00 to the loyal Choctaws, has been subject of action by the Choctaw Nation, and every item of such charges have been set off against what the nation conceded to be due them for services performed prior to 1861. These items are not chargeable, either lawfully or in good conscience, against the compensation the nation *legislated*, in 1888 (after their deaths), as due to them for their services rendered in the "net proceeds" case, paid over to the disbursing agent of the nation with directions to distribute the same among the heirs of the delegates, to be diminished *only* by the discharge of the delegates' *lawful obligation to the nation.* (Finding X, p. 12, Record.)

5. That the court be directed to find whether or not the evidence in the case showed that the delegates, in settling with the nation upon the $250,000 appropriation, turned over to the treasurer of the nation a U. S. Treasury warrant for $112,000, being numbered 2879; and whether or not upon the motion for a new trial the receipt of the Choctaw National Treasurer given to the delegates for this warrant was not submitted to the court in support of such motion with the request that the court find that this fact was shown.

Memorandum upon this request. The court found that there was no satisfactory evidence as to what disposition was made of $115,000 of the $250,000, appropriated by Congress on the Senate award in 1861. (Find-

ing IV, p. 4, Rec.) Not conceiving that the court would go behind the settlement of 1861, and disregard the act of the council of that date confirming the settlement, this receipt was not put in evidence until the motion for a new trial and amended findings of facts was made and requested. The court disregarded it, and in spite of the receipt, permitted the finding to stand as made. Not only this: In the Pitchlynn case a motion was offered the court requesting a call on the U. S. Treasury Department for the warrant or a copy thereof with the endorsements thereon, as the receipt showed that the warrant had been turned over to the treasurer of the nation, and the settlement of 1861 showed that the warrant had been turned over to Stark and Hotchkiss for collection. The court refused to permit this motion to be filed.

This receipt is as follows:

> Received Doaksville, Choctaw Nation, January 12, 1861, of Messrs. P. P. Pitchlynn, Israel Folsom and Peter Folsom, a treasury draft of the United States, payable at sight for one hundred and twelve thousand dollars. No. 2879 issued on the requisition of the Interior Department No. 5069, signed by Spinner, Treasurer of the United States, drawn on the Assistant Treasurer of the United States at New York, registered by F. Briggs of the Treasury, dated April 13th, 1861, it being part payment on the appropriation made by the Government of the United States on the appropriation made by Congress of five thousand (evidently intended for five hundred thousand, $250,000 in bonds and $250,000 cash) as an advancement on the award allowed under the 12th article of the treaty of June 22, 1855, which sum of $112,000, when collected is hereby agreed to and understood was that one-half of the amount shall be paid over to P. P. Pitchlynn, Israel Folsom, Samuel Garland and Peter Folsom jointly for fees due them according to a certain contract entered into in conformity with the acts and resolutions of the Choctaw Nation in council assembled, after deducting such charges as may be incurred in ne-

gotiating the draft and in the transportation of the same if it happens to be in specie.

In witness whereof, I, Henry Folsom, by and virtue of my office, have hereunto affixed my hand and seal on the day and year first above written. (Signed) H. M. Folsom, National Treasurer (Seal.)

(Motion to amend findings, C. Clms., p. —.)

This receipt shows more than the delivery of the warrant by the delegates to the treasurer of the Choctaw Nation. It shows that the warrant had been delivered to someone for collection. The settlement of 1861, the reports thereon and the settlement made by McKee and LeFlore January 12, 1889, show that the warrant was delivered to Stark and Hotchkiss, missionaries, to collect, and that they were to receive for that service 20% of the warrant. And further, it shows that the delegates were to receive one-half of the *net* proceeds of the warrant. The net proceeds of the warrant would have been $90,600.00. One-half of this sum would have been $45,300.00. The delegates were obligated to pay Cochran, the attorney, $14,140.00, and this was charged to them by LeFlore and McKee in 1889. This would have left the interest of the delegates in the warrant as $30,200.00. LeFlore and McKee, in 1889, *charge the delegates with having received from the proceeds of the warrant $30,275.84.* The court charges them with having received $74,927.45. In their Exhibit 4 and Statement "A," in determining the balance due the delegates on that date, January 16, 1888, they say, "It is shown by the papers thereto attached" that the delegates were to be charged with the sums they charge them with, and as to Exhibit "4" they say, "The above and foregoing statement is true and correct, as ascertained from all the data now in possession of the delegates and the attorneys."

(Appendix to Appellants' Bf. No. 3, p. 75, C. Cls. Rec., pp. 179, 180.)

6. That the court be directed to find whether or not the evidence showed that the $135,000.00 turned over to Indian Agent Cooper was turned over to him by the Commissioner of Indian Affairs, by direction of an Act of the Choctaw Council.

Memorandum on this request. The court finds (Finding IV, p. 4) that $135,000.00 was turned over by the delegates to United States Indian Agent D. H. Cooper to buy corn for the Choctaw Nation. That he paid $40,000.00 to Albert Pike for services in the "net proceeds" claim, and expended part in the purchase of corn, which spoiled, and the balance was not accounted for satisfactorily.

The only possible bearing that this finding can have on the case is to raise an inference that the delegates may have, in some way, been responsible for any misappropriation of this fund—if there was any—on the part of Cooper; that it may have been turned over to Cooper without authority.

It is shown by the Act of October 27, 1860 (Brief, p. 7), that the money was turned over to Cooper by the Commissioner of Indian Affairs, and by the further Act of the council, November 6, 1861, that the delegates had nothing whatever to do with it (Brief, p. 9), and that the exact amount was $134,512.85.

7. That the court be directed to find whether or not the evidence shows that, at the time the payment was made by LeFlore to the Garland heirs, Crockett Garland, one of the heirs present at the settlement, protested against the settlement as made by LeFlore.

Memorandum on this request. The court does not find in terms that the Garland heirs received the payment from LeFlore without protest, but, in the opinion (Pitchlynn Rec., p. 39) states "The parties accepted the money paid, and apparently without protest."

The only evidence in the record upon this question is to the effect that not only was protest made by Crockett

Garland to LeFlore at the time of the settlement with the Garland heirs in a bank at Fort Smith, Arkansas, in January, 1889, but the protest was of so violent a nature that it almost led to a personal encounter between Garland and LeFlore. True, that there is no protest shown by the other members of the Garland family present, but they were women, Crockett Garland being the only male representative of Samuel Garland present. Upon the solemn assurance of the writer of this brief, the following is all the evidence in the record on that question:

Georgia C. McCaffrey, granddaughter of Samuel Garland, testified that she was present at the time of the settlement between LeFlore and the Garland heirs at Fort Smith, Arkansas.

* * * * * *

"Q. I will ask you to state on this occasion if anything was said when this money was paid, by any of the heirs in regard to a further payment or demand for more money? A. Mr. Crockett Garland did, he demanded the rest that day.

Q. Did Crockett do anything after that? A. Yes, after they had some pretty heated words. Mr. LeFlore left the bank and we got Crockett to the hotel. (P. 55, Rec., C. Clms.)

* * * * * *

Q. You may state if you at any time authorized Campbell LeFlore to collect this money for you. A. No.

Q. Was he at any time your agent or attorney for the other heirs? A. No. I know my mother made the remark that if it is in LeFlore's hands, he is such a great rascal that we will never get it all.

* * * * * *

Q. You were with Crockett Garland when he made the demand of Campbell LeFlore for the balance of the money? A. Yes.

* * * * * *

Q. Do you remember what Col. LeFlore said when the demand was made upon him to pay a balance, as to whether there was a balance due? A. I don't remember. Mr. Garland was there and he

knew we were being defrauded and he got mad and they had some hot words, and I know Mr. LeFlore went out of the bank.

* * * * * *

(C. Clms. Rec., pp. 56, 57.)

Q. You have no recollection whatever what Col. LeFlore said why he could not pay the money? A. No. Mr. Garland got pretty hot, and we were glad to get what we did, and went away, and Mr. LeFlore left the bank.

* * * * * *

(C. Clms. Rec., p. 58.)

Q. Did you make any demand on LeFlore after this instance? A. No. Not that I know of.

* * * * * * *

Q. Did Col. LeFlore intimate to you or any of the heirs that he would pay the balance, or that there was no balance due? A. I don't know whether he said anything. Mr. Garland was not satisfied and he raised a row, and we got him off to the hotel, and Mr. LeFlore left the bank." (C. Clms. Rec., p. 60.)

While we do not deem this finding of which we complain material to the decision of the case, yet it is in a sense prejudicial. We again affirm that this was all the testimony in the record on this question of protest, and without further comment we do most earnestly submit, whether it is fair to have this record leave an imputation that there was no protest and that appellants were chargeable with a failure to protest or were guilty of laches upon the above, and what is hereafter submitted, as the only evidence upon these questions. The witness is neither impeached or contradicted. She was the only witness examined upon this question.

8. That the court be directed to find whether or not the evidence shows that after the settlement with the Garland heirs heretofore mentioned, if they, the Garland heirs, made any attempt to secure the balance claimed by them to be due.

Memorandum on this request. This question, as that of protest, we do not deem material to the decision of

the case. At most it could only be prejudicial. Finding XV, p. 17, Record, is to the effect that no efforts were made by the Garland heirs, after the settlement with LeFlore at Ft. Smith, Ark., until 1897, when a bill was passed the Choctaw Council to pay the Garland heirs $115,786.65, as the balance due them on the LeFlore settlement, which bill was vetoed by the Governor of the Choctaw Nation. While not shown, it was understood that the bill was vetoed on the ground that the withdrawal of the amount appropriated from the treasury would deplete the national funds to the detriment of the public schools. It is interesting to know that the then Governor who vetoed the bill was one of the beneficiaries of Campbell LeFlore's generous distribution of the delegates' fund in 1888.

In view of the fact that *all* and the *only* evidence before the court below was wholly disregarded by the court—of necessity so, or the finding could not have been made—we here submit *all* the evidence on that question.

Ellen Garland, the wife of Crockett Garland, was present at Fort Smith when LeFlore made payment to the Samuel Garland heirs, but was not present at the settlement. At the time she testified she was Post Mistress at Janis, Oklahoma. Regarding the action taken towards securing the balance due the Garland heirs the following *facts* were shown, no witness was impeached, nor were their statements in any wise whatever contradicted.

Mrs. Garland testified:

* * * * * * *

"Q. You may state after this money was collected at Ft. Smith, what efforts your husband made in regard to collecting the balance of this money due on the net proceeds claim? A. He always had lawyers looking after it. Gus Shaw and General Mackey were employed. There may have been others, but I don't know.

Q. How long after he received the money at Ft. Smith that he employed these attorneys to collect

the balance of this money? A. Not over a year when General Mackey was employed; there might have been others that I don't know about.

Q. Where did Gus Shaw live? A. Gus Shaw lived in Clarksville and General Mackey lived at Paris (meaning Paris, Texas)."

To state her testimony in abstract form she said that Mackey was dead; Shaw was living in Texarkana; that her husband continued to try to collect the balance; that he had hopes of getting it; that he went to the Choctaw Council for that purpose. That nothing was ever collected. Upon cross-examination: Does not know if the attorneys ever tried to collect the money from LeFlore and McCurtain; never heard of it; her knowledge of this matter is what her husband told her (C. Clms. Rec., pp. 33, 34).

Richard B. Coleman:

"Q. Do you know anything about any efforts made by Crockett Garland or Mary Rogers, or any of them to collect any balance of this money? A. Judge Cole told me at one time that he had brought suit. That is all I know about it (C. Clms. Rec., p. 38)."

Charles E. Staley, married granddaughter, Mrs. Mary Rogers; is engaged in the real estate business.

* * * * * * *

Q. You have stated that you were married to your wife, Leona Rogers, in the year 1893. I will ask you if the heirs made any effort to collect a certain sum claimed to be due them, as an estate from Samuel Garland, deceased, known as Samuel Garland's interest in the Net Proceeds claim for services rendered by him as a delegate of the Choctaw Nation? A. They did.

Q. I will ask you if they employed any lawyers or attorneys, and if so, whom did they employ and when? A. About the time of my marriage they employed Ben T. Duval of Ft. Smith, to represent

them in the matter, and he did represent the Heirs for some considerable time, and several efforts were made to the council to get a settlement, and efforts have been made for the last ten years (deposition given 28th April, 1909) to get assistance from Washington to get a hearing before the court.

Q. What do you mean by getting assistance from Washington? A. To enable us get a hearing in the court, to bring suit, under the law we could not sue the Choctaw Nation without legislation.

Q. Then you say the heirs have continued to make an effort ever since you have been in the family? A. Yes, for the last sixteen years, ever since I have had anything to do with the family, there has been continuous effort made to get settlement. (C. Clms. Rec. pp. 41, 42.)

Georgia C. McCaffrey:

* * * * * * *

Q. Have you made any effort to collect said money? A. Yes, ever since thirty days after he (LeFlore) refused to pay it.

Q. Did your mother employ counsel? A. Yes, sir, she employed a lawyer.

Q. Whom did she employ? A. Lawyer Randell of Dennison, Texas. (C. Clms. Rec. p. 55.)

* * * * * * *

Cross-Examination.

Q. Do you know whether or not the Garland Heirs or any one representing them, ever filed a suit against Col. LeFlore for this claimed balance? A. Yes, a suit was filed. I don't know who it was against, I know they began suit right away after we saw what was done.

Q. Where was this suit instituted? A. I am sure I could not say. My mother's first attorney was Randall.

Q. Did she have any other attorneys besides Randall? A. Yes, later, Messrs. Cole and Redwine.

Q. Then the only attorneys the Garland heirs had was Randall and Redwine? A. Yes. (C. Clms. Rec. p. 57.)

* * * * * * *

Q. Who had charge of this matter other than Mr. Redwine and Coleman? A. I don't know that any one has.

Q. Then the only efforts the Garland heirs have made to collect this claim alleged against the Choctaw Nation is the suit Mr. Randall brought and the suit Mr. Redwine brought? A. No. Mr. Cole had this a long time ago, and Mr. Randall contended for several years, I know he would come quite often to see us, and my mother made several trips to Texas. (C. Clms. Rec. 58.)

Q. Why did you not hold Col. LeFlore responsible? A. I don't know. I guess he was not worth it.

Q. You did not bring any suit personally against Col. LeFlore for this claim? A. No, I don't think we ever did.

Q. Then what suit did you bring when Mr. Randall represented you? A. I don't know, mother and Mr. Randall fixed that up and I don't know anything about it.

* * * * * * *

Q. Did you make any demand upon Mr. LeFlore after this incident at Ft. Smith? A. I don't know, we had an attorney after that date, and he brought suit for the money.

Q. You don't know where and against whom he brought suit? A. No, mother took it into her own hands, and she went to Dennison once or twice and to Tuskahoma once or twice. (C. Clms. Rec. p. 60.)

Re-Direct Examination.

Q. I believe you said you had Mr. Cole look after the case? A. Yes.

Q. What year was he employed? A. I don't know. A year or two after he and Leona married.

Q. When were they married? A. In 1892.

Q. Then he was employed in 1895? A. Yes.

Q. What efforts did he make to collect it? A. We moved to the Cherokee Nation, and I left my interest in his hands, and whether he brought suit I don't know. He and mother attended to that. I think he brought suit but I don't know when or where. (C. Clms. Rec. p. 62.)

The court stated in the Pitchlynn case, (Op. P. 39,) if laches might intervene to forestall recovery, the defence would be conclusive.

It is only because I do not want this case—and the Pitchlynn case—to rest under these unjust charges of non-protest and laches that this testimony is put into the record. As stated, I do not deem either question material in the determination of the sole question in the case, viz: does the Choctaw Nation owe Garlands anything? If so, how much. At most they can only be prejudicial. Admittedly not being material in determining the case under the jurisdictional act directing judgment as to what may be equitably due, I am somewhat at a loss to know why these questions are injected into the case, and more concerned as to the position taken by the court, when the only testimony in the case, in the absence of impeachment or contradiction, shows there was neither want of protest nor lack of diligence in the attempt to assert a claim while appellants were without a proper forum wherein to assert it, and until such forum was provided by the jurisdictional act.

HARRY PEYTON,
Attorney for Appellants.

INDEX

AUTHORITIES CITED

21003—26

In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 42

THE HEIRS OF SAMUEL GARLAND, DECEASED, appellants

v.

THE CHOCTAW NATION

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR APPELLEE

OPINION BELOW

The opinion of the Court of Claims (R. 19–22) is reported in 59 Ct. Cls. 768.

The first opinion of the Court of Claims in this case is reported in 54 Ct. Cls. 55, and the opinion of this Court upon an appeal taken by appellant herein (plaintiff below) is reported in 256 U. S. 439.

JURISDICTION

The judgment to be reviewed was entered on June 9, 1924. (R. 22.) Motion for a new trial, made on September 15, 1924, was entertained by

the court and denied on October 28, 1924. (R. 23.) The plaintiff's application for an appeal to this Court was filed November 24, 1924 (R. 23), under the provisions of Sections 182 and 242 of the Judicial Code. (Act of March 3, 1911, Chap. 231, 36 Stat. 1087, 1142, 1157.)

THE QUESTION

This suit was brought to recover compensation for services rendered by Garland to the Choctaw Nation, and, since the jurisdictional act directed that the award should be on a *quantum meruit* basis, the only questions are those of fact, i. e., what was the reasonable value of the services rendered and how much has already been paid.

STATEMENT

In 1853 the Choctaw Nation appointed a delegation, of which Garland was a member, to represent it in the collection of its claim against the United States growing out of the lands east of the Mississippi ceded by the Nation to the United States. This suit was brought by Garland's heirs to recover pay for the services rendered by him as a member of the delegation. Jurisdiction to hear and determine the case was conferred upon the Court of Claims by Section 5 of the Act of May 29, 1918 (Chap. 216, 35 Stat. 444, 445), which reads as follows:

> That the Court of Claims is hereby authorized and directed to hear and adjudicate the claims against the Choctaw Nation of

> Samuel Garland, deceased, and to render judgment thereon in such amounts, if any, as may appear to be equitably due. Said judgment, if any, in favor of the heirs of Garland shall be paid out of any funds in the Treasury of the United States belonging to the Choctaw Nation, said judgment to be rendered on the principle of *quantum meruit* for services rendered and expenses incurred. Notice of said suit shall be served on the Governor of the Choctaw Nation, and the Attorney General of the United States shall appear and defend in said suit on behalf of said nation.

The questions involved are the value, if any, of such services, and whether such value exceeds the payments already made.

On the first trial of this case the Court of Claims dismissed the petition, holding that the delegation created by the resolution of the Choctaw National Council of November 9, 1853, was a continuing body (54 Ct. Cls. 55, 60, 62), and that the payment to the successors of the original delegation "served to discharge the nation from any further liability in this matter to the delegation or any member thereof or their representatives" (id. 65; 256 U. S. 439, 442). On appeal to this Court this decision was reversed, and it was held—

> That the obligation of the Choctaw Nation was to the delegates individually and not to the delegation as a body, and that the two existing delegates, in collecting and disbursing the money, were agents of the Nation

> merely, so that its payment to them did not discharge the Choctaw Nation's obligation to the heirs of a former delegate who had rendered part of the services. (256 U. S. 439, per syllabus.)

This Court, being of the opinion that under the terms of the jurisdictional act (R. 1) judgment was " 'to be rendered on the principle of quantum meruit' for what Garland did and expended," remanded the case in the following words (Id. 445):

> Upon the return of the case it (the Court of Claims) may determine the amount due Garland, if anything, dependent upon what his services contributed in securing the congressional appropriation.

In its findings of fact the Court of Claims set forth in detail the work done by the delegation and Garland's connection with it and the results accomplished in the collection of the Nation's claims. The nature and extent of Garland's services are fully dealt with. (R. 17.) The findings also show that Garland was paid altogether the sum of $86,876.15. (R. 13, 17–19.)

There is no finding of fact as to the money value of Garland's services, but the conclusion of law was that the plaintiffs were not entitled to recover anything, and in the opinion, after referring to what had already been paid, the Court said (R. 22):

> It is absolutely inconceivable that he could have earned more.

While a motion to remand for additional findings is made, the motion does not ask for a finding of value of the service.

SUMMARY OF ARGUMENT

The jurisdictional act directs that judgment shall be rendered on the principle of *quantum meruit* for services rendered and expenses incurred, and the mandate of this Court on the former appeal contains the same direction. This required a disregard of any contracts and left only a simple question of fact for the determination of the Court of Claims. There is no finding of value of services, but its absence makes it clear that the findings would not support a judgment for appellants. The appellants do not seek a remand for a finding of reasonable value of the service. The opinion of the Court of Claims shows that if supplied it would be adverse to the claimants. Their motion to remand proceeds on the erroneous theory that contracts for compensation should be controlling as a measure of value. Since there is no finding of value which would support a judgment for appellants, and since they do not ask, and it would be futile, to have the case remanded for such a finding on the basis of *quantum meruit,* which is the only proper basis, the judgment should be affirmed.

ARGUMENT

THE FINDINGS WOULD NOT SUPPORT A JUDGMENT FOR APPELLANTS

We will not attempt to follow in detail the method of treatment adopted by the appellants. The case is a very simple one and the summary of argument needs little elaboration.

The only questions are those of fact, i. e., the value of the services rendered by Garland and the amount already paid for them.

The terms of the jurisdictional act and of the opinion and mandate of this Court on the former appeal leave no room for any basis of recovery other than *quantum meruit*. The various contracts or engagements respecting compensation made by the Nation and which the appellants claim should control the recovery or be conclusive evidence of value were obliterated from the case by the terms of the jurisdictional act, except to the extent that they may be considered as items of evidence bearing on the reasonable value of the services rendered. As the jurisdictional act gives appellants their only right to be in court, they must recover according to its terms or not at all.

Appellants complain of the amounts that the court below found had been paid for these services. The court found as a fact that certain sums had been paid direct to Garland or his representatives, and also that the agents of the Choctaw Nation had paid certain liabilities of the delegation, for a proportionate share of which Garland was liable. (R. 14.) These findings are of fact or, at most, inseparable questions of law and fact that will not be reviewed by this Court. (*United States* v. *Omaha Tribe on Indians*, 253 U. S. 275, 281.)

Strangely, the Court of Claims overlooked making a finding as to the value in money of Garland's

services. It did find the amount paid him. Its opinion shows clearly enough that if a finding of value had been made it would have been that Garland was paid as much as or more than he had earned. The statement in the opinion may not be used to supplement a deficiency in the findings (*Stone* v. *United States,* 164 U. S. 380, 383; *Crocker* v. *United States,* 240 U. S. 74, 78), but the opinion does disclose what that finding would be, if made, and that to remand the case for such a finding would be futile.

The absence of a finding of value makes it impossible for the findings to support a judgment for the appellants, and on the findings as they stand the appellants are not entitled to recover.

Although the appellants have made a motion to remand for further findings, they have not asked that the case be remanded for a finding of value on the basis of *quantum meruit,* which is the only basis on which recovery may be allowed. They no doubt realize that a remand for that purpose would be futile, as the opinion discloses that the finding would be adverse. Their whole case proceeds on the erroneous theory that some other basis than *quantum meruit* should be used, or that the contracts for compensation made by the Choctaw Nation should be accepted as conclusive evidence of the value of the services—a contention which, if sustained, would convert the case into an action on a contract which the jurisdictional act said it should not be.

The eight matters on which additional findings are asked are open to objection, because they amount to a cross-examination of the lower Court, and ask for the transmission of evidence to this Court, and in effect ask for this Court to pass upon the evidence (See *McClure* v. *United States,* 116 U. S. 145), and, finally, because they nowhere ask that which the appellants alone would have the right to ask—a finding of value on the basis of *quantum meruit.*

Since there is no finding to support the contentions of appellants, and the appellants do not ask that the case be remanded for such a finding, and since it is obvious that, in any event, a remand for that purpose would be futile, the judgment should be affirmed.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.
HERMAN J. GALLOWAY,
Assistant Attorney General.
GEORGE T. STORMONT,
Attorney.
HAMPTON TUCKER,
Choctaw National Attorney.

NOVEMBER, 1926.

○

SUPREME COURT OF THE UNITED STATES.

Nos. 42 and 43.—October Term, 1926.

The Heirs of Samuel Garland, Deceased, Appellants, 42 *vs.* The Choctaw Nation. Sophia C. Pitchlynn and Others, Heirs-at-Law of Peter P. Pitchlynn, Deceased, Appellants, 43 *vs.* The Choctaw Nation.	Appeals from the Court of Claims.

[January 3, 1927.]

Mr. Justice McReynolds delivered the opinion of the Court.

These causes, although heard separately and upon different records, may be disposed of conveniently by one opinion.

Samuel Garland, Peter P. Pitchlynn and two others were appointed delegates of the Choctaw Nation under an Act of the Legislative Assembly approved November 9, 1853, and charged with the duty of pressing to settlement a claim against the United States for ceded lands. They performed valuable services and each of them received therefor considerable sums of money. Their heirs sought large additional payments. Finally Congress referred the matter to the Court of Claims. The Act of June 21, 1906, c. 3504, 34 Stat. 325, 345, provides—

> That the Court of Claims is hereby authorized and directed to hear and adjudicate the claims against the Choctaw Nation of the heirs of Peter P. Pitchlynn, deceased, and to render judgment thereon in such amounts, if any, as may appear to be equitably due. Said judgment, if any, in favor of the heirs of Pitchlynn, shall be paid out of any funds in the Treasury of the United States belonging to the Choctaw Nation, said judgment to be rendered on the principle of quantum meruit

> for services rendered and expenses incurred. Notice of said suit shall be served on the governor of the Choctaw Nation, and the Attorney-General of the United States shall appear and defend in said suit on behalf of said nation.

A like Act, approved May 29, 1908, c. 216, 35 Stat. 444, 445, directed adjudication of the claim of Samuel Garland, deceased.

Garland's heirs brought suit in the Court of Claims September 3, 1908. It held against them upon the theory that the delegation which represented the Choctaw Nation should be treated as a unit and as such had been fully paid for the entire service. Upon appeal, this Court reversed that judgment and sent the cause back, after saying—"The contention under the facts disclosed in the petition is technical. The petition showed services rendered and, if the petition be true, valuable services—and for them there should have been recovery if the Nation was liable, and we think it was. How much we do not say nor did the Court of Claims consider, it being of opinion that the Nation was not liable for anything. Upon the return of the case it may determine the amount due Garland, if anything, dependent upon what his services contributed in securing the congressional appropriation." *Garland's Heirs* v. *Choctaw Nation*, 256 U. S. 439, 445.

Much evidence has been presented in both causes and there are elaborate findings. The court held the heirs of Garland—No. 42—were not entitled to recover anything, and dismissed their petition. It rendered judgment for $3,113.92 in favor of Pitchlynn's heirs —No. 43. The causes are here by appeals allowed, respectively, January 19 and February 2, 1925.

In neither cause did the Court of Claims definitely find the value of the services rendered by the delegate, but it ascertained and stated the sums received by each of them. By dismissing the petition of Garland's heirs, it adjudged, in effect, that he had received full compensation; and the judgment in favor of Pitchlynn's heirs for $3,113.92 determined that the amount theretofore received plus such recovery would amount to full compensation for his services.

We think the findings of fact sufficient to permit us to dispose of the causes, and accordingly deny the motion to remand.

The enabling Acts very clearly provide for recoveries upon the principle of *quantum meruit* for services rendered and expenses

incurred. The Court of Claims was not bound to accept opinions of the legislature or executive officers of the Choctaw Nation; its duty was to determine for itself what the services were worth. After consideration of the evidence it reached the above-stated conclusions, and we find no adequate reason for overturning the result.

The judgments below are

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.